No. 10-13

Supreme Court, U.S.
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In The Supreme Court of the United States

THOMAS W. BISHOP,
STEVEN E. HAMANT
and
TIMOTHY E. SCANLON,

Petitioners,

v.

RAYMOND JAMES FINANCIAL SERVICES, INCORPORATED,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

There are three questions presented as follows:

1) Whether the Fourth Circuit erroneously affirmed the District Court's finding that the petitioners' employment was terminable at-will under their respective securities broker contracts with the respondent, so that the arbitration award of compensatory damages to them was vacated?

Respondent made the at-will argument to the arbitration panel in its motion to dismiss (A-141 @ 149-150), opposed by petitioner Bishop (A-186) and petitioners Hamant and Scanlon (A-195), and motion denied by the arbitration panel. (A-289)

2) Whether the Fourth Circuit erroneously affirmed the District Court's finding that although the arbitration panel found all of petitioners' claims to "relate to the termination of Claimants' employment with Respondent" (A-288), nevertheless the arbitration award was predicated upon a breach of fiduciary duty singular to respondent's in-house counsel, Terrance Bostic, not respondent.

3) Whether the Fourth Circuit, notwithstanding its repeated acknowledgment and citation of decades of precedent proscribing plenary judicial review of arbitral awards, instead conducted plenary review of the facts and law found by the arbitration panel, and erroneously affirmed vacatur of the arbitral award?

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PETITION FOR A WRIT OF CERTIORARI

The petitioners, Thomas W. Bishop, Steven E. Hamant, and Timothy E. Scanlon respectfully petition for a writ of certiorari to review the published opinion and judgment of the U. S. Court of Appeals for the Fourth Circuit decided February 22, 2010. (A-55) The Court is presented with a decision, the rationale of which facilitates plenary court review of arbitral awards, contrary to established federal policy and precedent for arbitration finality.

OPINIONS BELOW

The published opinion of the United States Court of Appeals for the Fourth Circuit is dated February 22, 2010. (A-55) The first memorandum opinion of the District Court for the Eastern District of Virginia, Richmond Division, is dated December 18, 2007. (A-1) The second memorandum opinion is dated a year later, December 17, 2008. (A-24)

JURISDICTION

The published decision of the United States Court of Appeals for the Fourth Circuit was decided on February 22, 2010. (A-55) A Petition for Rehearing and Petition for Rehearing *En Banc* was timely filed, and was denied on March 26, 2010. (A-78, 79) Pursuant to Supreme Court Rule 13.3, this petition has been filed within 90 days of the Fourth Circuit's denial of the Petition for Rehearing. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

RELEVANT PROVISIONS INVOLVED

9 U.S.C. § 10(a)(4) provides for a district court to vacate an arbitral award upon application of a party "...where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."

NASD Rule 10101 in effect during the relevant time frame of this case provides in pertinent part "...for the arbitration of any dispute, claim, or controversy arising out of or in connection with the **business** of any member of the association or arising out of the employment or termination of employment of associated person(s) with any member...." (Bold type added.)

STATEMENT OF THE CASE

The following are facts relevant to this petition:

1) On or about April 27, 2004, respondent Raymond James Financial Services ("Raymond James") notified petitioner Bishop, the branch manager at Raymond James' Richmond branch, that petitioners Bishop, Hamant and Scanlon were being terminated as securities brokers with Raymond James, and that their branch office would be closed. Bishop's co-manager, Michael Finnie, was also so notified by Raymond James. (A-58) Later, at the five-day arbitration hearing on claims brought by the petitioners against Raymond James, Finnie, who

had relocated at another branch, testified extensively on behalf of Raymond James' defense. The two primary witnesses at the arbitration hearing for Raymond James were Finnie and Terrance Bostic, (A-309, 310, 311), the salaried staff lawyer employed by Raymond James.

2) After Raymond James terminated its business relationship with each of the petitioners, each petitioner resigned his affiliation with Raymond James. (A-306, Bishop; 305, Scanlon; 304, Hamant) The arbitration panel found that it was virtually impossible for them, under the circumstances that they were placed in by Raymond James, to re-affiliate with a different branch office. (A-291) The petitioners resigned to avoid having a termination on their respective professional records that would hamper them in their future business efforts elsewhere. (A-186 @ 193)

3) Prior to these resignations, Terrance Bostic, a salaried lawyer from Raymond James' legal department, assumed representation of the petitioners jointly with his representation of Raymond James in arbitration proceedings stemming from complaints to Raymond James by competing brokers from other firms. (A-3, 4)

4) During the course of Bostic's joint representation of Bishop and Raymond James, Bostic withdrew his representation of Bishop because of what he perceived as a conflict of interest. Bostic did not tell Bishop what the perceived conflict was. Bostic testified extensively for Raymond James in its defense of the petitioners' claims at the

arbitration hearing in the case at bar. (A-309, 310) The arbitration panel found that Bostic, representing the petitioners and Raymond James jointly in prior arbitration proceedings, did not tell the petitioners, nor did Raymond James, that they were under a higher level of supervision by Raymond James, and that Raymond James intended to terminate its business relationship with each petitioner. (A-291)

The arbitration panel specifically found that the petitioners were entitled to notice and warning of Raymond James' higher level of supervision under Raymond James' own compliance policy. (A-210) Through his secret communications with Raymond James during his joint representation of the petitioners and Raymond James in other arbitration proceedings, salaried staff lawyer Bostic knew that his employer Raymond James was not following its own compliance policy in not giving such notice to petitioner Bishop and petitioners Hamant and Scanlon. (A-291) Raymond James controlled Bostic, its salaried employee, in its secret communications with him, and the arbitration panel took note. (A-291)

5) The arbitration hearing took place over a period of five days, June 22-23, 2006, November 27-29, 2006. (A-309, 310) The final order of the District Court vacating the arbitration award is dated December 17, 2008. (A-54) Counsel for Raymond James decided to furnish a copy of the arbitration transcript to the District Court via cover letter dated August 14, 2008. (A-307) The parties, the District Court, and the Fourth Circuit have not

cited pages from the transcript. The five days of arbitration hearing involved the production of numerous exhibits by the parties, extensive testimony on direct and cross-examination by nine witnesses, extensive argument of counsel on numerous issues both factual and legal, as well as additional telephonic argument of counsel to the arbitration panel. (A-309, 310, 311)

6) In paragraph 5 of Raymond James' first motion to vacate the arbitration award, it is stated that the petitioners were terminated by Raymond James because it "...had decided it no longer wanted to do **business** with the Defendants [petitioners] [so] it provided five days written notice of the intention to terminate on April 27, 2004". (A-82) (Bold type added.) This same statement by Raymond James is repeated in paragraph 5 of its amended motion to vacate. (A-86) In the opinion issued by the arbitration panel in the case at bar, the panel references the "**business dealings**" between Raymond James and the petitioners. (A-290) The arbitration panel further states that Raymond James "...failed to act in accordance with the standards of **business fairness** and good faith required by NASD rules...." (A-291) (Bold type added.)

7) At the five-day arbitration hearing, in which the panel of three arbitrators unanimously and jointly issued their award favoring the petitioners (A-294, 295, 296), the petitioners presented to the panel their proof of damages in their testimony given to the arbitration panel (A-83, para. 8; A—87, para. 8), and in their exhibits presented to the arbitration panel. (A-83, para. 8;

A-87, para. 8) See also petitioners' damage exhibits presented to the arbitration panel at the arbitration hearing. (A-262-273, Bishop; 274-280, Hamant; 281-285, Scanlon)

REASONS FOR GRANTING THE PETITION

In Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576 (2008) at the very outset of Justice Souter's opinion, it is stated: "The Federal Arbitration Act (FAA or Act), 9 U.S.C. § 1 *et seq.*, provides for expedited judicial review to confirm, vacate, or modify arbitration awards." The Supreme Court goes on to hold that the statutory grounds for prompt vacatur and modification of an arbitration award may not be supplemented by contract to provide for expanded judicial review. The Court states that the statutory grounds in the FAA are exclusive. Under II in the Hall Street opinion by Justice Souter, it is stated: "Congress enacted the FAA to replace judicial indisposition to arbitration with a 'national policy favoring [it] and plac[ing] arbitration agreements on an equal footing with all other contracts."

How "expedited" in the case at bar (even allowing for a legitimate medical delay for counsel for the respondent) was the progress of this case in the District Court? Raymond James filed its original motion to vacate in the District Court on or about January 12, 2007. (A-84) District Judge Robert E. Payne entered his order remanding the case to the three-member arbitration panel for clarification by order dated December 18, 2007. (A-20) Judge Payne entered his final order vacating the arbitration

award on December 17, 2008 (A-54), almost two years after the case was first filed in his court. The decision of the arbitration panel had been rendered on December 12, 2006. (A-295)

Just why did the processing of this case in court under the expedited FAA take so long? This is an important question and a vital concern because expedited arbitration under the FAA is a national federal policy long recognized by this Court and repeated in Hall Street, above. But it was no concern of the District Court, and was not even addressed by the Fourth Circuit. Indeed, Judge Payne stated during his June 16, 2008 telephone conference with counsel, speaking of the unanimous remand responses from the arbitration panel (A-297 and A-300): "Because the text of the April opinion was far different than the text of the opinion that they issued some time ago, several years ago now." (A-97)

Having received the two unanimous arbitration panel responses, and the case having been in his court since on or about January 12, 2007 (A-84), on June 16, 2008 Judge Payne had this to say: "Because the text of the April [arbitration panel remand] opinion was far different than the text of the opinion that they issued some time ago, several years ago now....so it's a whole new ballgame and it needs all entire new briefing." (A-97) Bishop's counsel argued that it was "not a whole new ballgame." (A-97) Counsel for Raymond James stated in response to Judge Payne in this connection in part: "While I wouldn't say it's new...." (A-98)

In Judge Payne's two memorandum opinions (A-1 and A-24), and in the Fourth Circuit's opinion (A-55) both courts repeatedly acknowledge and cite the binding precedents not only in the Fourth Circuit, but in the Supreme Court as well. Acknowledgement of precedent is not always the same as abiding by it. Like the District Court, the Fourth Circuit has artfully parsed the arbitration panel's unanimous decision, and its unanimous remand responses.

To illustrate, in the case at bar, the Fourth Circuit decided two and only two issues. The first issue is whether the petitioners were at-will employees of Raymond James under their respective financial agreements with Raymond James. (A-249, para. 3, Bishop; A-234, para. 3, Hamant; and A-220, Scanlon) In this connection, see Bishop's argument to the arbitration panel that each contract not only contained a so-called at-will provision, but thereafter contained "regulatory requirements" stating that in the securities brokerage <u>business</u> activities contemplated under the contracts "are controlled by laws, both federal and state, or rules, regulations and interpretations under the Regulatory Authorities", such authorities including the NASD (A-189). These contract provisions were brought to the attention not only of the arbitration panel, but also specifically to the attention of Judge Payne, and the Fourth Circuit. Neither court addressed these provisions. But the arbitration panel did. It spoke expressly of "business fairness and good faith required by NASD rules". (A-291) And, of course, the arbitration panel existed under the umbrella of the regulatory authority NASD. This is unlike

either the District Court, or the Fourth Circuit, who were not empowered to trump the regulatory authorities as plenary review courts.

With respect to the at-will issue, the Fourth Circuit in its opinion on its face, took over and trumped the arbitration panel, and assumed the role of a plenary appellate court after citing contrary and compelling Fourth Circuit and U.S. Supreme Court precedent. (A-74 and A-75) Recognizing that NASD Rule 10101 controlled the authority of the arbitration panel, the plenary review Fourth Circuit found that the petitioners were at-will employees of Raymond James and thus not entitled to any damages for wrongful termination. (A-75)

The Fourth Circuit sidesteps NASD Rule 10101 by stating that it is "less than clear." (A-75) The Fourth Circuit does this even though precedents hold that if there is doubt about arbitral authority, resolve the doubt in upholding the arbitration award. Zandford v. Prudential-Bache Securities, 112 F.3d 723, 726-727 (citing the Supreme Court). But now this is not so with the Fourth Circuit in its opinion, notwithstanding its own and Supreme Court precedent.

Its opinion states that because Rule 10101 "is less than clear" (A-75) then the Fourth Circuit is converted to an appellate court with plenary review of arbitral decisions. This is against everything that the FAA stands for as national public policy. It is against precedents set by this Court, and is against

the Fourth Circuit's own precedent that it cites elsewhere in its opinion.

The Fourth Circuit does this on the at-will issue even though Raymond James had filed a motion to dismiss with the arbitration panel on this issue (A-141 @ 149-150), and even though the motion to dismiss was opposed by the petitioners. (A-186, Bishop; A-141 @ 149-150, Hamant and Scanlon) The arbitration panel denied the motion to dismiss filed by Raymond James. (A-289) The Fourth Circuit goes even farther than plenary review. The Fourth Circuit holds that "Rule 10101 is less than clear" to the Fourth Circuit. So, it nullifies the Rule. There is no finality to arbitration under the approach of the Fourth Circuit. This kind of overreaching opens the door to the elimination of FAA national policy favoring final resolution by arbitration.

In addition, the Fourth Circuit failed to quote all of the pertinent portion of Rule 10101. In a footnote (A-70) the Fourth Circuit quotes Rule 10101 as stating that it is "for the arbitration of any dispute, claim, or controversy...arising out of the employment or termination of employment of associated person(s) with any member...(b) between or among members and associated persons.: (A-70)

Rule 10101 in full pertinent part states that it is "for the arbitration of any dispute claim or controversy arising out of or in connection with the **business** of any member of the association or arising out of the employment or termination of employment of associated persons with any member...." (Bold type added.) In the motion to vacate of Raymond

James and in its amended motion to vacate, in paragraph 5 of each (A-82 and A-86), Raymond James states that it terminated the petitioners because "it no longer wanted to do **business** with them". (Bold type added.) In the arbitration panel's opinion, the panel refers to "business dealings" (A-290) and "business fairness". (A-291)

The arbitration panel's opinion states that all claims are of the petitioners, including their "legitimate and high **business** expectations". (A-288) The Fourth Circuit overreached and found on plenary review that regardless of what the arbitration panel said, in the Fourth Circuit's view the arbitration had found that the petitioners were not damaged by breach of fiduciary duty. The Fourth Circuit held that Bostic, the salaried staff lawyer for Raymond James, was the one who breached any fiduciary duty owing to the petitioners. The Fourth Circuit holds that Raymond James is not and was not a law firm, and therefore owed no duty to the petitioners.

But the arbitration panel found that Bostic was in communication with Raymond James, unknown to the petitioners, at the time Bostic was representing both Raymond James and the petitioners in certain arbitration proceedings. The arbitration panel found that Bostic and Raymond James both communicated with one another that Raymond James was placing the petitioners under heightened supervision and intended to terminate its relationship with them. This finding places the petitioners squarely within the covered arbitration provisions of NASD Rule 10101, because it goes to

their employment as securities brokers for Raymond James and also is a matter arising out of their business relationship with Raymond James.

NASD Rule 10101 is not dependent upon an arbitration provision in the employment contracts, and there is no contractual arbitration provision. The duty to arbitrate arises from the NASD Rules. (A-39) (Like the Fourth Circuit, Judge Payne misquotes Rule 10101 by omitting the business relationship referenced in Rule 10101.) Rule 10101 fully empowered the arbitration panel in this case to decide that the at-will provision in the employment contracts was not dispositive of the petitioners' claims for damages, and that Raymond James' secret communications with its staff lawyer Bostic over its plans to place the petitioners under heightened supervision and its intention to terminate them were improper under NASD principles. Even the decision in Zandford v. Prudential-Bache Securities, Inc., 112 F.3d 723 (4th Cir. 1997) held that non-contractual and post-termination tort claims were arbitrable (112 F.3d at 729), and resolved "what is at most a question of doubtful coverage...in favor of arbitration". (112 F.3d at 730)

A leading Fourth Circuit FAA decision, Miller v. Prudential-Bache Sec., Inc., 884 F.2d 128, 130 (4th Cir. 1989), cert. denied, 497 U.S. 1004 (1990), declared categorically that "contract misconstruction is an insufficient basis for vacating an arbitration award." This Court explained the strength and steadfastness of the federal courts' commitment to this rule under the Federal Arbitration Act as follows (884 F.2d at 130):

> Over three decades ago, the Supreme Court held that a contention that "the arbitrators misconstrued a contract is not open to judicial review" under § 10(d) of the Federal Arbitration Act. *Bernhardt v. Polygraphic Co. of America, Inc.*, 350 U.S. 198, 203 n. 4, 76 S.Ct. 273, 276 n. 4, 100 L.Ed. 199, 205 n. 4 (1956). The federal courts, including this one, have unwaveringly followed this rule, and have consistently held that contract misconstruction is an insufficient basis for vacating an arbitration award. *See, e.g., National R.R. Passenger Corp. v. Chesapeake & Ohio Ry. Co.*, 551 F.2d 136, 142 (7th Cir. 1977) (arbitrators do not exceed their powers by misconstruing a contract, even if their interpretation is, in the eyes of the reviewing court, clearly erroneous. *Textile Workers Union of America v. American Thread Co.*, 291 F.2d 894, 896 (4th Cir. 1961) (misinterpretation of the contract giving rise to the arbitration will not vitiate the award).

CONCLUSION

The Supreme Court has repeatedly stated that final and binding, expeditious arbitration in commercial disputes is FAA national policy, and that federal courts have only narrow, not plenary, review jurisdiction. Up until now the Fourth Circuit has restrained its jurisdiction within the principles of this precedent. What is of deep concern in this case is that the Fourth Circuit, while reciting the referenced narrow jurisdiction precedent for federal

courts as national policy in reviewing FAA arbitration awards, has nevertheless severely overreached its authority, maintaining its claimed right to exercise plenary review. The arbitration award at bar was issued by a unanimous panel of three arbitrators after five days of extensive hearings. This Court's supervision is called for to preserve the national arbitration policy, to guide the federal judiciary, and to clear the air before further dilution of FAA policy and supporting precedent occurs.

Respectfully submitted,

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APPENDIX

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IN THE UNITED STATES DISTRICT FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

RAYMOND JAMES FINANCIAL SERVICES,INC.,
Plaintiff,

v. Civil Action No. 3:07cv28

THOMAS W. BISHOP, et al.,
Defendants.

MEMORANDUM OPINION

This matter is before the Court on the AMENDED MOTION TO VACATE an arbitration award filed by Raymond James Financial Services, Inc. ("Raymond James") (Docket No. 2). The parties have briefed and argued the motion. Subsequently, because the award was confusing and it was difficult to ascertain the meaning of the award, the Court called for briefing addressed to whether the award could be remanded to the arbitrator for further proceedings, and, if so, whether a remand was appropriate in this case.

The defendants, Steven E. Hamant and Timothy E. Scanlon, filed oppositions to the motion to vacate. The defendant, Thomas W. Bishop, filed a pleading opposing the motion to vacate into which was incorporated a motion to dismiss the motion to vacate under Fed. R. Civ. P. 12(b) (1) and 12(b) (6). Alternatively, Bishop sought summary judgment under Fed. R. Civ. P. 56.[1] The defendants also filed

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[1] In fact, Bishop did not actually file motions. Instead, he filed a memorandum which was partially captioned as

motions for sanctions against the lawyer representing Raymond James and his law firm, and against Raymond James.

For the reasons set forth below, the award will be remanded to the arbitrator for further proceedings and all other motions will be denied without prejudice.

BACKGROUND

Raymond James is a financial services company that is a member, and operates as a broker-dealer under the rules, of the National Association of Securities Dealers ("NASD"). In March 2001, Bishop, Hamant and Scanlon left Josephthal & Company to join Raymond James.

On March 8, 20 01, Hamant and Scanlon executed an FA Agreement by which each would be a financial advisor acting as an independent contractor (not as an employee) of Raymond James. (Exs. 2 and 3). Bishop, who was the manager of the office, executed, on July 13, 2001, an Independent Sales Associate Agreement (Ex. 1) by which he became an independent contractor (not an employee) of Raymond James. (Plaintiff's Memorandum in Support Its of Motion to Vacate ("PI.'s Mem.") (Docket No. 25) Exs. 1-3). Sometime after the Agreements were signed. Defendants began

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alternative motions. In the interest of efficiency, the Court will consider the memorandum as presenting both the motions and a supporting memorandum, notwithstanding the unorthodox approach reflected in Bishop's pleadings (which approach, of course, could be the basis for summary rejection of the unorthodox pleading)

operating a Raymond James office, "Branch 67H," in suburban Richmond, Virginia.

The agreement signed by each Defendant contained the same termination clause, to wit:

> "[e]ither party may terminate this Agreement by providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement."

(Pl.'s Mem. Exs. 1, 2, and 3 at ¶ 3). While termination without cause required five business days prior notice, either party also had the right:

> "to immediately terminate this Agreement immediately for cause in the event of a material breach of the Agreement, including but not 1imited to a failure to comply with any applicable laws, both federal and state, or any rule, regulation, or interpretation of the Regulatory Authorities [defined elsewhere] or policy of" Raymond James.

(Id.) The agreements also provided that disputes would be arbitrated before the NASD, and indeed, as a member of the NASD, Raymond James was required by the NASD's rules to arbitrate all employment disputes pursuant to NASD arbitration.

In 2003 and 2004, persons associated with competing broker-dealers filed complaints against the Defendants. (PL.' s Mem. Ex. 4 [Bishop] ; Id. Ex.

8 at 2 ¶ 2 [Hamant and Scanlon]) . At some point, a Raymond James in-house lawyer undertook to represent all of the Defendants in the NASD arbitration of these complaints. (Pl's Mem. Ex. 8 at 2 ¶ 2 [Hamant and Scanlon], 3 ¶ 5 [Bishop]). Also, without the Defendants' knowledge, Raymond James placed under "heightened supervision" the office in which the Defendants worked.

On April 27, 2004, a Raymond James officer gave the Defendants written notice that their agreements with Raymond James would terminate in five days. (PL's Mem. Ex. 7). The termination date ultimately was extended to June 25, 2004, during which time "the Defendants . . .were given the opportunity to associate with other Raymond James branches . . . ." (PL's Mem. at 3 ¶ 7) . However, the Defendants did not end up "associating" at another Raymond James branch. (Id.).

After the termination, the in-house lawyer continued to represent the Defendants in the ongoing NASD arbitration between them and the third-party broker-dealer complainants. Those arbitrations were resolved favorably to Hamant and Scanlon. Thereafter, in late 2004, the Raymond James in-house lawyer terminated his representation of Bishop. However, Raymond James subsequently settled the claim against Bishop without financial consequence to him. Bishop retained, and paid the fee charged by, counsel who replaced the Raymond James in-house lawyer.

In August 2005, all three Defendants filed consolidated claims against Raymond James before the NASD. (Pl.'s Mem. Exs. 5, 6) . The caption of the Statement of Claims filed in the arbitration lists all three Defendants as claimants. However, the

text of the Statement of Claims makes no significant reference to either Hamant or Scanlon, focusing instead almost entirely on Bishop.[2] Indeed, the background facts focus almost solely on what was alleged to have happened to Bishop. Then, the articulation of the claims (¶¶ 14-17) seeks to characterize Raymond James' conduct as actionable without reference to any specific claimant. The Statement of Claims concludes with a general statement of the amount of each claimant's damages without making any linkage between the asserted damages and the conduct attributed to Raymond James.

In sum, the Statement of Claims is a hodgepodge of conclusory, perjoratively presented factual allegations and legal theories that seem to have little, if any, relation to Hamant and Scanlon and that, as to Bishop, focus largely on his alleged abandonment during the third-party arbitration by the Raymond James in-house lawyer and on the termination of Bishop's employment with Raymond James.

The NASD arbitration panel held hearings for five days. The briefs filed in the arbitration and the damage evidence offered by Bishop, Hamant and Scanlon present the case principally as one in which the Claimants contend that they were wrongfully terminated and thereby suffered financial loss. However, the briefs also discuss general, incidental

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[2] Bishop's counsel in this action signed the Statement of Claims submitted in the NASD arbitration on behalf of all three claimants. For reasons neither explained nor readily apparent, another lawyer later appeared to represent Hamant and Scanlon in the arbitration and that lawyer represents them in this action.

contentions of other perceived wrongs, such as breaches of the Virginia Franchise law, breaches of unarticulated equitable precepts, and breach of generally asserted fiduciary duties. There is no discernable link between those theories and the damage evidence.

The arbitration award reflects the muddle created by the Claimants' arbitration briefs and the Statement of Claims. For example, in describing the arbitrators' view of the claims, the award makes no effort to differentiate among the three claimants. Instead, it recites a summary of the claims as if all three claimants had advanced the same claims and suffered the same kinds of damage, which the record shows not to be the case.

The record discloses that the claim presented by Bishop is substantially different from the claims by Hamant and Scanlon, but the claims of Hamant and Scanlon appear to be virtually identical. However, in explaining the basis upon which the award was made, the written arbitration ruling makes no distinction among the three claimants, notwithstanding that the circumstances of Hamant and Scanlon in the arbitration, as shown by the record, were considerably different from the claims presented by Bishop.

The panel's summary of the "causes of action" reflects the conflation of concepts and claimants. The panel's summary of the "causes of action" is set forth below verbatim:

- breach of fiduciary and legal duties
- violation of just and equitable legal principles of trade
- breach of promises and inducements
- interference with, and unlawful

termination of, Claimants' prospective economic advantages

- interference with the performance of contractual promises and inducements
- tortious and deceitful termination of Claimants' legitimate and high business expectations;
- violation of statutory Virginia public policy set forth in Virginia Code § 13.1-558 [Virginia's Retail Franchising Act]
- common law and statutory conspiracy

Award p. 2. The award ends its recitation of the claims that the panel thought it was deciding by stating: "[t]he causes of action relate to the termination of Claimants' employment with Respondent." Id. (emphasis added).

The panel's statement of reasons for the award likewise reflects the conflation of claims and claimants. Indeed, it is no understatement to observe that the statement of reasons is convoluted and garbled in identifying the claim or claims upon which redress was granted, as well as the reasoning that was advanced to support the award. Of course, given the controlling legal principles in this circuit, the Court is obligated to make the best sense out of the arbitral decision that can be made without rewriting it or giving it a meaning that is not fairly inferable from the terms and text used by the arbitrators.

The starting point for that endeavor, of course, is the text of the award which is set forth in full below:

Although Respondent did have some apparent reasons to be concerned about circumstances and the relationships between registered representatives in its Richmond, Virginia branch office #67H, among other factors leading to this decision, the Panel is of the opinion that Respondent engaged in the unauthorized practice of law by employing staff counsel to advise and represent these Claimants in their individual capacities. Having assumed the role and responsibilities of legal counsel in relation to its registered representatives, Respondent is held to the highest ethical obligations and fiduciary duties that would apply to a lawyer and law firm duly licensed to practice law in the Commonwealth of Virginia and engaged in business dealings with its legal client. This includes a duty to maintain the confidences and secrets of, and to maintain utmost loyalty to protect the interests of, each of these Claimants. In addition, Respondent failed to act in accordance with the standards of business fairness and good faith required by NASD rules in not providing these Claimants with notice and warning that they were under a higher level of supervision to the extent stated in Respondent's own policies and procedures that its registered representatives should be entitled to

> rely upon, and in not providing the same notice and warning and in not sharing the communications between Respondent and these Claimants' legal counsel, who was also representing Respondent, regarding Respondent's higher level of supervision of these Claimants and its intention to Terminate its relationship with these Claimants. There was possibly also a failure to communicate through and from common legal counsel the nature of separate settlement negotiations in also believed that in light of the above described high fiduciary duty and ethical obligations, that withdrawal of legal .representation during a pending arbitration both prejudiced some or all Claimants' litigation interest and made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter.

Award, p. 3. An effort to understand what the award means necessitates analyzing what the arbitrators said in explaining why they made it.

First, the award asserts that Raymond James "engaged in the unauthorized practice of law by employing staff counsel to advise and represent these Claimants in their individual capacities" in the arbitrations initiated by the competing brokers. It is highly dubious that Raymond James engaged in the unauthorized practice of law merely by allowing an in-house lawyer to represent the Defendants in the NASD arbitration. However, it is not necessary to

assess the validity of the panel's conclusion on that point because a reasonable reading of the text requires the conclusion that the arbitrators did not predicate the award of compensatory damages on the finding of "unauthorized practice of law" set forth in that sentence.

Second, the award expresses the view that the respondent [a corporation], having assumed the role and responsibilities of legal counsel as to the Claimants, is "held to the highest ethical obligations and fiduciary duties that would apply to a lawyer and law firm duly licensed to practice law in the Commonwealth of Virginia and engaged in business dealings with its legal client." That proposition is even more dubious than the first one because it was the in-house lawyer, not Raymond James, to whom any ethical duty attached. But, assuming, without deciding, that the panel's premise was correct, it is also clear that the arbitrators did not predicate an award of compensatory damages on the finding in that sentence.

Third, the award describes the "highest ethical obligations and fiduciary duties" referred to in the preceding sentence as including "a duty to maintain the confidences and secrets of, and to maintain utmost loyalty to protect the interest of each of these Claimants." Whatever else might be said of this conclusion, the award does not appear to predicate a finding of liability on the breach of any of those perceived duties.

Moreover, when considered as an integrated whole, those three sentences do not appear to be the basis for imposing liability or for the determination of compensatory damages made in the award. Hence, although it is difficult to understand why those

sentences are even in the ruling, it is not necessary further to assess their meaning.

The arbitrators then shift away from the alleged unauthorized practice of law notion and address the standards of "business fairness and good faith required by NASD rules." In particular, the ruling specifies two ways in which Raymond James was thought to have failed to have acted with fairness and good faith. First, Raymond James is said to have failed "in not providing these Claimants with notice and warning that they were under a higher level of supervision to the extent stated in Respondent's own policies and procedures that its representatives should be entitled to rely upon." Second, another failure to act in accordance with the NASD standards was found to be "in not providing the same notice and warning and in not sharing the communications between Respondent and these Claimants' legal counsel, who was also representing Respondent, regarding Respondent's higher level of supervision of these Claimants and its intention to terminate its relationship with these Claimants."

It is difficult to understand those statements either taken alone or in consideration of the record evidence. The statements could be construed to be a finding of a freestanding violation of some NASD rules of fair dealing and good faith. If, however, that is the intended meaning of the statements, then the task on judicial review of the award is to assess the award in perspective of the contention by Raymond James that the only claimed or proved damages were those related to termination of employment, not to any violation of NASD rules.

On the other hand, the statements could be construed to mean that Raymond James wrongfully

terminated the Defendants' employment or breached the employment contract by not providing notice and warning of higher supervision and in not otherwise giving notice of the intent to terminate the employment. If that is what was intended, the task on judicial review would be to ascertain whether, as Raymond James contends, the award is contrary to law because it imported, into the contractual termination provision, terms to which the parties did not agree.

It, of course, is possible that those statements are intended to have some other significance. If so, the task on judicial review would be a different one.

Fourth, the award observes that "[t]here was possibily also a failure to communicate through and from common legal counsel the nature of separate settlement negotiations in NASD arbitration." That speculation could not, as a matter of law, constitute the basis for a supportable finding of liability or the imposition of compensatory damages.

Finally, the ruling says that, "in light of the above described high fiduciary duty and ethical obligations, that withdrawal of legal representation during a pending arbitration both prejudiced some or all Claimants' litigation interest and made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter." This sentence refers back, to the fiduciary duties assertedly assumed because an in-house Raymond James lawyer represented the Defendants in the arbitration brought by the competing brokers.

The principal problem with the first finding in that sentence is that it simply cannot relate at all to Hamant and Scanlon because the record makes clear that their interests were not prejudiced by any act or

omission on the part of the Raymond James in-house lawyer. To the contrary, the separate arbitration was, as to them, terminated favorably, and the in-house Raymond James lawyer represented Hamant and Scanlon in achieving that desirable result.[3] As to Bishop, that statement does not accord with the award of compensatory damages to Bishop because the amount of the award appears to be based on evidence respecting Bishop's asserted financial loss caused by virtue of the termination of his employment.

The second clause of the sentence ("made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter") appears to be based on the fact that the Defendants were terminated without being afforded an opportunity to transfer to another Raymond James branch. If that is what was intended as the basis for the award, it would be necessary on judicial review to ascertain whether, notwithstanding the plain language of the termination provision, transfer somehow had become a legal precondition to termination. That construction of the award is problematic because it contradicts the plain text of the termination provision. Thus, it is, at least possible, and may even be likely, that the arbitrators had some other ground for making the award. Unfortunately, in order to uphold the award, the Court would be required to speculate or to make its ruling on the basis of a statement that contradicts the clear text of the termination provision. And, to do that would amount to rewriting the contract.

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[3] Hamant and Scanlon do not contend otherwise.

Of equal importance is the final sentence of the explanation of reasons which is that "[a]ny and all claims relief [sic] not specifically addressed herein, including Claimants' requests for punitive damages, are denied." In perspective of the ruling (taken as a whole) and of the description of claims given by the arbitrators, that statement must mean that, at least, the following claims were denied:

- breach of promises and inducements
- interference with the performance of contractual promises and inducements
- violation of statutory public policy set forth in Va. Code § 13.1-558
- common law and statutory conspiracy

That then means that the award could have been intended to provide relief for the claims of:

- the alleged breach of fiduciary and legal duties, or
- the alleged violation of just and equitable legal principles of trade, or
- the alleged interference with, and unlawful termination of, Claimants' respective economic advantages

It is not possible to ascertain which of those claims the award actually intended to use as the predicate for liability or as the basis for the compensatory damages awarded. However, considering that (1) in summarizing the claims, the panel said that all claims asserted by the Defendants "relate to the termination of Claimants' employment," (2) the frequent references to termination of employment in the statement of reasons (and in the briefs submitted to the panel) , and (3) the fact that the Claimants' proof of damages consisted of the alleged loss of the benefits of the employment contract, it seems that

the reason for the award is wrongful termination because there was, in the view of the arbitrators, not cause for the termination. If that was the arbitrators' intent, judicial review must proceed with that in mind.

Another asserted basis for liability could be the perceived breach of fiduciary duties. If that is what was intended, judicial review should proceed with that in mind. And, the record suggests that judicial review as to the claims of Hamant and Scanlon might involve considerably different factors than would review of Bishop's claims.

Given the confused and contradictory reasoning in the award, it is necessary to assess in this case whether it is appropriate to remand the case to the arbitrators for a further explanation of what award is intended for each claimant and what the basis for any such award is.

DISCUSSION

Arbitration is a matter of contract. See Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416 (4th Cir. 2000) (quoting United Steelworkers v. Warrior & Gulf Navigation Co. , 363 U.S. 57 4, 582, 80 S.Ct. 1347, 1353, 4 L.Ed.2d 1409 (1960)). Where the parties have agreed to arbitrate a dispute, judicial review of the arbitration decision is quite limited under the Federal Arbitration Act. The judicial task "is limited to determining whether the arbitrators did the job they were told to do - not whether they did it well, or correctly, or reasonably, but simply whether they did it." Remmey v. PaineWebber, Inc., 32 F.3d 143, 146 (4th Cir. 1994). Arbitrators are not required to give reasons for an award. United Steelworkers of America v. Enterprise Wheel and Car Corp., 363

U.S. 593, 598 (1960). Nonetheless, "in some cases reviewing courts must rely on the arbitrator's reasoning to determine whether he was applying contractual terms or his own brand of industrial justice' to resolve disputes." Cannelton Industries, Inc. v. District 17, United Mine Workers of America, 951 F.2d 591, 594 (4th Cir. 1991). Accordingly, it is the rule that:

> When an arbitrator does provide reasons for a decision and when those reasons are so ambiguous as to make it impossible for a reviewing court to decide whether an award draws its essence from its agreement, the court may remand the case to the arbitrator for clarification.

Id. (citations omitted) (emphasis added). In Cannelton the Court of Appeals found that it was unclear from the arbitrator's award whether money damages were awarded because Cannelton had violated contractual requirements and the terms of a previous award or because Cannelton had violated a statute by contracting out work for which, under a collective bargaining agreement, union employees should have been employed. Id.

Citing its decision in Clinchfield Coal Co. v. District 28, United Mine Workers, 720 F.2d 1365 (4th Cir. 1983), the Fourth Circuit noted that it previously had faced similar difficulties with arbitration awards and held that, where the written arbitration decision was so ambiguous as to prohibit a determination of whether the award drew its essence from the agreement, a remand to the arbitrator for clarification of the reasoning was appropriate. In particular, the Court of Appeals held

that "[a] court's power to vacate an award because of an arbitrator's failure to address a crucial issue necessarily includes a lesser power to remand the case to the same arbitrator for a determination of that issue." Cannelton, 951 F.2d at 594.

Remand to an arbitrator for clarification is appropriate where an award is patently ambiguous, the issues submitted were not fully resolved, or when the language of the award has generated a collateral dispute. See Hilb, Rogal & Hobbs Co. v. Golub, 2006 WL 2403390, *7 (E.D. Va. 2006) (citing Oil, Chemical & Atomic Workers Int'l Union v. Rohm & Haas, Texas, Inc., 611 F.2d 492, 492 (5th Cir. 1982)).

Applying the first of those three grounds for remand, the court, in Brookdale Hospital Medical Center v. Local 1199, 101 F. Supp. 2d 283 (S.D.N.Y. 2000), remanded the case to the arbitrator for written clarification of the basis for an award granting reinstatement to alleged sexual harassers where it was not possible to ascertain whether the award violated public policy against sexual harassment because the arbitrator had not specified the factual predicate for her findings. The district court in Walter N. Yoder & Sons, Inc. v. Sheet Metal Workers' Local Union No. 100, 661 F. Supp. 1141 (D. Md. 1981), similarly found it necessary to remand the case to arbitrators for written clarification of the basis for decision where it was not possible to ascertain whether the award violated federal law or public policy, either of which ground would have foreclosed enforcement of the award. Because the court was unable to ascertain whether violations of law or public policy existed, a remand was necessary to permit meaningful judicial review. In Ollett v.

Department of the Air Force, 253 F.3d 692 (Fed. Cir. 2001), the Court of Appeals found it necessary to remand the arbitrator's decision because the award was unclear respecting the predicate for an award of back pay. See also, Hyle v. Doctor's Assocs, Inc., 198 F.3d 369 (2d Cir. 1999) (finding that district court should have remanded award to arbitrator where award granting damages and injunction against defendant was ambiguous due to the claimant specifying that it was seeking damages and injunction only against other defendant).

As explained above, the arbitrators in this case issued a written decision with an explanation of reasons for the award they entered. The explanation of reasons is so confusing and difficult to understand, particularly when viewed in perspective of the Statement of Claims and the issues, as framed by the text of the award, and as explained by the explanation of reasons given for the award, that it is impossible to conduct meaningful judicial review. Under certain circumstances, the award might be appropriately affirmed. Under other circumstances, the award may exceed the power of the arbitrator because of a disregard of a contractual provision controlling the rights and remedies available to the parties. The Court needs to understand the basis for the decision made by the arbitrators as to each of the three Claimants before it is possible to conduct meaningful judicial review. Where, as here, the arbitrators have chosen to explain the reasons for their award, it is necessary that the explanation be sufficient to permit the process of judicial review to be intelligently conducted. That simply is not possible in this case. Accordingly, the case will be remanded to the arbitrators for a clarification of the

basis upon which the award of compensatory damages was made to each of the Claimants.

The Clerk is directed to send a copy of this Memorandum Opinion to all counsel of record and to the National Association of Securities Dealers for delivery to the panel that issued the award.

It is so ORDERED.

/s/
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: December 18, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

RAYMOND JAMES FINANCIAL SERVICES, INC.,
Plaintiff,

V. Civil Action No. 3:07cv28

THOMAS W - BISHOP, et al.,
Defendants,

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, it is hereby ORDERED that:

(1) the AMENDED MOTION TO VACATE (Docket No, 2) is denied without prejudice;

(2) all other motions are denied without prejudice; and

(3) this action is remanded, to the arbitrators for a clarification of the basis upon which the award of compensatory damages was made to each of the Claimants.

The Clerk is directed to send a copy of this Order to all counsel of record and to the National Association of Securities Dealers for delivery to the panel that issued the award.

It is SO ORDERED.

/S/
Robert E. Payne
Senior United States District Judge

Richmond Virginia
Date: December 18, 2007

FILED: April 2, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1056
(3:07-cv-00028-REP)

RAYMOND JAMES FINANCIAL, INCORPORATED,

Plaintiff - Appellee,

v.

THOMAS W. BISHOP,
Defendant - Appellant.

ORDER

Thomas W. Bishop, Steven H. Hamant, and Timothy E. Scanlon (collectively "the former employees") appeal from the district court's order remanding Raymond James Financial's, Inc.'s complaint to the arbitration panel "for a clarification of the basis upon which the award of compensatory damages was made to each of [the former employees] Because the order appealed from is a non appealable interlocutory order, we dismiss the appeal.

This Court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. .§ 1292 (2000); Fed. R. Civ. P. 54(b).

In addition, the Federal Arbitration Act specifically permits appeals from certain orders concerning an arbitration proceeding or award. See 9

U.S.C. § 16 (a) (2000). The order here appealed does not fall into any of these categories.

We therefore grant Raymond James Financial's motion to dismiss the appeal as interlocutory. We also deny as moot the former employees' motion for summary and final disposition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

Entered at the direction of Judge Wilkinson with the concurrence of Judge Niemeyer and Senior Judge Wilkins.

For the Court

/s/ Patricia S. Connor

Clerk

FILED: April 2, 2008

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 08-1056
(3:07-cv-00028-REP)

RAYMOND JAMES FINANCIAL, INCORPORATED,

Plaintiff - Appellee

v.

THOMAS W. BISHOP; STEVEN H. HAMANT; TIMOTHY E. SCANLON,

Defendants - Appellants

J U D G M E N T

In accordance with the decision of this Court, this appeal is dismissed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

RAYMOND JAMES FINANCIAL SERVICES,INC.,
Plaintiff,

v. Civil Action No. 3:07cv28

THOMAS W. BISHOP,
STEVEN H. HAMANT, and
TIMOTHY E. SCANLON
Defendants.

MEMORANDUM OPINION

This matter is before the Court on the RENEWED MOTION TO VACATE the arbitrator's decision (Docket No. 48) which was filed by Raymond James and which the Defendants oppose and on the Defendants' motions to confirm the arbitration panel's award (Docket Nos. 53 and. 56), which Raymond James opposes. Originally, Raymond James filed a motion to vacate an award that was entered by the arbitration panel on December 12, 2006. The Defendants moved for enforcement of the award. For reasons set forth in a Memorandum Opinion issued on December 18, 2007 (the "December 18 Memorandum Opinion"), this matter was remanded to the arbitration panel for clarification. See Raymond James Financial Services, Inc. v. Bishop, et al. , 2007 WL 4531964, Civil Action No. 3 :07cv28 (E.D.Va. 2007).

Thereafter; the arbitration panel provided two documents purporting to be clarifications on April 11, 2008 and June 4, 2008 . Subsequent to those clarifications, the parties filed the above-mentioned motions now under consideration. The parties submitted the matter for decision on the papers and without argument.

For the reasons set forth below, the Plaintiff's RENEWED MOTION TO VACATE (Docket No. 48) will be granted, and DEFENDANT THOMAS W. BISHOP'S MOTION TO CONFIRM THE ARBITRATION PANEL'S DECISION AND WARDS RENDERED ON DECEMBER 12, 2006 (Docket No. 53) and DEFENDANTS HAMANT AND SCANLON' S MOTION TO CONFIRM ARBITRATION AWARD (Docket No. 56) will be denied.

BACKGROUND

Raymond James is a financial services company with a franchised branch office, "Branch 67H," in Richmond, Virginia. Defendant Thomas W. Bishop served as the branch manager of that office, beginning in April of 2001. On July 13, 2001, Bishop executed an "Independent Sales Associate Agreement," by which be became an independent contractor for Raymond James. Defendants Steven Hamant and Timothy Scanlon executed similar agreements by which they became independent contractors working out of the Branch 67H. Each of these association agreements contained the same termination clause. The agreements were terminable without cause by either party:

> providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement.

(Jt. Exs. 9, 10, and 11 at 3). Either party also had the right:

> to immediately terminate this Agreement immediately for cause in the event of a material breach of the Agreement, including but not limited to a failure to comply with any applicable laws, both federal and state, or any rule, regulation, or interpretation of the Regulatory Authorities [defined elsewhere] or policy of

Raymond James. (Id.) The agreements between Raymond James and the Defendants do not contain clauses mandating arbitration of disputes. However, under the rules of the National Association of Securities Dealers ("NASD"), Raymond James, as a NASD member, and the Defendants, as persons associated with a member, were required to have all employee disputes arising out of the employment of brokers or the termination of their employment arbitrated under NASD rules.

In 2003 and 2004, Raymond James and the Defendants were involved in NASD arbitrations with National Securities Corporation and various persons associated with that firm (the "UNSC Arbitration"). An in-house attorney at Raymond James represented all three of the Defendants in the NSC Arbitration, Unknown to the Defendants, Raymond James placed Branch 67H under "heightened supervision" because of the claims that had been made against them. The exact nature of this

heightened supervision is not apparent from the record.

Raymond James provided the Defendants with written notice of termination without cause on April 27, 2004 and provided the opportunity for the Defendants to continue their association with Raymond James at a different branch. None of the Defendants availed themselves of this opportunity. The same in-house lawyer continued to represent the three Defendants in the NSC Arbitration even after Raymond James exercised the termination clause in their contracts.

The NSC Arbitration was resolved favorably to Defendants Hamant and Scanlon while they were represented by the Raymond James in-house lawyer. Thereafter, in late 2004, the in-house counsel perceived a possible conflict between Raymond James and Bishop and withdrew from the representation of Bishop in the NSC Arbitration proceedings. Bishop then retained his own counsel in that arbitration. Raymond James subsequently settled the claim against Bishop with no liability to Bishop.

In August 2005, all three Defendants filed a consolidated arbitration proceeding against Raymond James before the NASD. (Jt. Ex. 1.) The caption of the Statement of Claims filed in the arbitration listed all three Defendants as claimants. However, the text of the Statement of Claims made no significant reference to either Hamant or Scanlon,

focusing instead almost entirely on Bishop[1]. Indeed, the background facts in the Statement of Claims focused almost solely on what was alleged to have happened to Bishop. Then, the Defendants' articulation of claims sought to characterize Raymond James' conduct as actionable without reference to any specific claimant. (See id. at \\ 14-17.) The Statement of Claims concluded with a general statement of the amount of each claimant's alleged damages without articulating any causal linkage between the asserted damages and any specific conduct attributed to Raymond James.

In sum, the Statement of Claims is a hodge-podge of conclusory, pejoratively presented factual allegations and rather strange legal theories that seemed to have little, if any, relation to Hamant and Scanlon and that, as to Bishop, focused largely on the alleged abandonment of Bishop by the Raymond James in-house lawyer during the NSC Arbitration and on the termination of Bishop's employment with Raymond James.

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[1] Bishop's counsel in this action signed the Statement of Claims submitted in the NASD arbitration on behalf of all three claimants. For reasons neither explained nor readily apparent, another lawyer later appeared to represent Hamant and Scanlon in the arbitration and that lawyer represents them in this action.

The briefs filed in the arbitration and the damage evidence offered by Bishop, Hamant, and Scanlon presented the case principally as one in which the Claimants contended that they were wrongfully terminated and thereby suffered financial loss. However, the briefs also discussed general, incidental contentions of other perceived wrongs, such as breaches of the Virginia Franchise law, breaches of unarticulated equitable precepts, and breach of generally asserted fiduciary duties. There was alleged no discernable link between any of those theories and the damage evidence.

The arbitration award reflects the muddle created by the Defendants' arbitration briefs and their Statement of Claims. For example, in describing the arbitrators' view of the claims, the award made no effort to differentiate among the three claimants. Instead, it recited a summary of the claims as if all three claimants had advanced the same claims "(which they did not) and as if all Claimants had suffered the same damage.

In explaining the basis upon which the award was made, the written arbitration ruling made absolutely no distinction among the three claimants, notwithstanding that the circumstances of Hamant and Scanlon in the arbitration, as shown by the record, were considerably different from the claims presented by Bishop.

The panel's summary of the "causes of action" reflects the conflation of allegedly actionable concepts and claimants. The panel' s summary of the "causes of action" is set forth below verbatim:

- breach of fiduciary and legal duties
- violation of just and equitable legal principles of trade
- breach of promises and inducements
- interference with, and unlawful . termination of, Claimants' prospective economic advantages
- interference with the performance of contractual promises and inducements
- tortious and deceitful termination of Claimants[1] legitimate and high business expectations;
- violation of statutory Virginia public policy set forth in Virginia Code § 13.1-558 [Virginia's Retail Franchising Act]
- common law and statutory conspiracy

(Jt. Ex. 2 at 2.) The award ended its description of the "cause of action" that the panel thought it was deciding by stating: "[t] he causes of action relate to the termination of Claimants' employment with Respondent." Id. (emphasis added).

The panel's statement of reasons for the original' award likewise reflected the conflation of claims and claimants. Indeed, it is no understatement to observe that the statement of reasons given by the arbitrators in the original award was garbled in identifying the claim or claims upon which redress was granted, as well as the reasoning that was advanced to support the award. However, under the law of the Fourth Circuit, the Court's obligation was to make sense of the award, if possible. See December 18 Memorandum Opinion at 7.

The starting point for that endeavor, of course, was the text of the award which is set forth in full below:

> Although Respondent did have some apparent reasons to be concerned about circumstances and the relationships between registered representatives in its Richmond, Virginia branch office #6 7H, among other factors leading to this decision, the Panel is of the opinion that Respondent engaged in the unauthorized practice of law by employing staff counsel to advise and represent these Claimants in their individual capacities. Having assumed the role and responsibilities of legal counsel in relation to its registered representatives, Respondent is held to the highest ethical obligations and fiduciary duties that would apply to a lawyer and law firm duly licensed to practice law in the Commonwealth of Virginia and engaged in business dealings with its legal client. This includes a duty to maintain the confidences and secrets of, and to maintain utmost loyalty to protect the interests of, each of these Claimants. In addition, Respondent failed to act in accordance with the standards of business fairness and good faith required by NASD rules in not providing these Claimants with notice and warning that they were under a higher level of supervision to the extent stated in Respondent's own policies and procedures that its registered representatives should be entitled to rely upon, and in not providing the same notice and warning and in not ,sharing the communications between Respondent and these Claimants' legal counsel, who was. also

> representing Respondent, regarding Respondent's higher lever of supervision of these Claimants and its intention to terminate its relationship with these Claimants. There was possibly also a failure to communicate through and from common legal counsel the nature of separate settlement negotiations in another NASD arbitration. The Panel also believed that in light of the above described high fiduciary duty and ethical obligations, that withdrawal of legal representation during a pending arbitration both prejudiced some or all Claimants' litigation interest and made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter.

(Jt. Ex. 2 at 3.)

The arbitrators' decision, however, made clear that, on several of the Defendants' theories, the rulings were in favor of Raymond James. The final sentence of the explanation of reasons stated: "[a]ny and all claims relief [sic] not specifically addressed herein, including Claimants' requests for punitive damages, are denied." (Id.) Viewing this ruling, taken as a whole, through the perspective of the description of claims given by the arbitrators, the Court concluded that, at least, the following claims against Raymond James were denied:

- breach of promises and inducements
- interference with the performance of contractual promises and inducements
- violation of statutory public policy set forth in Va. Code § 13.1-558

- common law and statutory conspiracy

December 18 Memorandum Opinion, 2007 WL 4531964, * 6 . The arbitrator's decision left open the possibility that the award could have been intended to provide relief for the claims of:

- the alleged breach of fiduciary and legal duties, or
- the alleged violation of just and equitable legal principles of trade, or
- the alleged interference with, and unlawful termination of, Claimants' respective economic advantages[2].

However, as explained in the December 18 Memorandum Opinion, it was not possible to discern, from the arbitrators' opinion, which of the three remaining possibilities was the basis for the award. Therefore, the matter was remanded to the arbitrators for clarification[3]. The arbitration panel responded to the request for clarification in letters dated April 11, 2008 and June 4, 2008.

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[2] The above listed bullet points recite the description of the Defendants' "causes of action" as the arbitrators articulated them. (Jt. Ex. 2 at 2.)

[3] December 18 Memorandum Opinion, 2007 WL 4531964, *7 - 8.

The April 11 Letter articulated that

> [T] he arbitrators have determined that the award be affirmed and gives as it [sic] reasons the following:
>
> It is the finding of the panel that the evidence was clear that the broker-dealer provided legal representation to the claimants through its lawyer employee in a matter involving a business relationship between the employer and claimants that was also adversarial with a clear conflict of interest.
>
> The evidence showed that this included the fact that claimants were billed (by the broker-dealer for its own account) through their registered representative compensation accounts, itemized hourly time for legal services, provided by the broker-dealer's employed lawyer.
>
> There was also evidence presented, including e-mails, that showed that the respondent's attorney favored the interest of his employer broker-dealer to the disadvantage of the claimants, who were also his clients. It is the position of the panel that if a corporation employs a lawyer to provide legal services that corporation is then engaged in the practice of law. As such, it is held to the same standard as a law firm and owes to its client the highest degree of fiduciary duty. If it chooses to engage in the business with such clients, it is obligated to place the interest of those clients ahead of its own.

> The broker-dealer in this case failed in that obligation and the claimants suffered losses pertaining to the issues for which the responded provided its lawyer.

(Jt. Ex. 3 (emphasis added).)

The June 4 letter contained the comment that, in affirming its original decision on liability: "The unauthorized practice of law was among other factors considered by the panel and that considering the case as a whole believes the liability to be just and appropriate [sic] ." The June 4 letter then repeated the award of damages in the amount originally awarded, specifically:

> The respondent is liable and shall pay to claimant, Bishop compensatory damages in the sum of $156,050, prejudgment interest, specifically excluded.
>
> The respondent is liable and shall pay to claimant, Hamant compensatory damages in the sum of $74,050, prejudgment interest, specifically excluded.
>
> The respondent is liable and shall pay to claimant, Scanion [sic], compensatory damages in the sum of $7 2, 050, prejudgment interest, specifically excluded,

(Jt. Ex. 4.)

Like the original award, the letters of clarification are not really very clear at all

respecting the legal basis for the finding of liability. Nor do they articulate a causal link between the perceived liability and the monetary award. However, under the law of the Fourth Circuit, it remains the obligation of the Court to make the best sense out of the clarification of the award but, in so doing, the Court may not give to the award a meaning that is not fairly inferable from the text and terms used by the arbitrators or that is not fairly ascertainable from the record. See Cannelton Industries, Inc. v. District 17, United Mine Workers of America, 951 F.2d 5 91, 5 94 (4th Cir. 1991).

The June 4 letter expresses the panel' s view that its liability finding was made because Raymond James engaged in the unauthorized practice of law and other factors[4]. The "other factors" mentioned in the April 11 letter as the basis for the liability finding were: (1) that Raymond James provided the Defendants legal representation through an in-house lawyer who also represented Raymond James in the NSC arbitration; (2) that the Defendants were billed for that representation; and (3) that the in-house lawyer favored the interests of Raymond James over those of the Defendants and that the Defendants "suffered losses pertaining to the issues for which [Raymond James] provided its lawyer." (Jt. Ex. 3 at 2.)

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[4] "The unauthorized practice of law was among other factors considered by the panel. . . ." Jt. Ex. 4.

Taken together, the original award and the clarifying letters establish that the arbitrators imposed liability on Raymond James because: (1) Raymond James engaged in the unauthorized practice of law by providing an in-house lawyer to represent the Defendants and Raymond James; and (2) the in-house lawyer somehow favored the interest of Raymond James over the Defendants in the NSC Arbitration in which no award was entered against any Defendant.

DISCUSSION

I. Standard of Review

The Supreme Court and Congress have consistently evinced a preference for limited judicial review of arbitration awards, in order to encourage the use of arbitration as an alternative to judicial resolution of disputes. See Remmey v. PaineWebber, Inc. , 3 2 F. 3d 14 3, 146 (4th Cir. 1994) . Therefore, a federal district court's review of an arbitration award is "substantially circumscribed." Patten v. Signator Ins. Agency, Inc. , 441 F.3d 230, 234 (4th Cir. 2006) . The authority of an arbitrator is very broad, and decisions made by those arbitrators are entitled to "great deference." Id. at 235. The question on review is generally not whether the arbitrators made a correct decision or used correct procedures in arriving at their decision, but, rather, solely whether the arbitrators did the job that was asked of them. Remmey, 3 2 F.3d at 14 6 Thus, the party seeking to have an arbitrator's award vacated shoulders a heavy burden." Id. at 149.

However, a district court asked to review an arbitrator's decision is permitted to vacate that decision in a few circumstances. See Patten, 441 F.3d at 234. In order for the district court to vacate an arbitrator' s award, the party requesting vacatur must prove the existence of one of the few grounds specified in the Federal Arbitration Act ("FAA") or one of a few common law grounds. Id. The FAA provides that an arbitration award may be vacated in cases in which, inter alia, the arbitrators exceeded their powers," 9 U.S.C. §10(a)(4). Furthermore, a district court may vacate an arbitrator's award if " it does not draw its essence from the contract or evinces a manifest disregard for the law. Three S Delaware, Inc. v. DataQuick Information Systems, Inc., 492 F.3d 520, 527 (4th Cir, 2007).

In this case, Raymond James contends that the arbitration panel exceeded its authority; the panel demonstrated a manifest disregard for the law; and the award did not draw its essence from the agreement. Each of these contentions will be assessed in turn.

II, Statutory Grounds for Vacatur

Raymond James alleges that the panel's award is subject to vacatur by this Court because the arbitrators exceeded their authority in granting the award, thereby violating the FAA. 9 U.S.C. § 10(a) (4) . In deciding whether the arbitrators have exceeded their authority, the reviewing court must look to the agreement granting the arbitrators their authority to arbitrate. See Peoples Sec. Life Ins Co. v. Monumental Life Ins. Co. , 991 F.2d 141, 14 7 (4th

Cir. 19 93) . Generally, any ambiguity respecting whether an action was within the arbitrators' authority must be resolved in favor of the arbitrators' decision. See id.

The agreements between Raymond James and the Defendants do not contain arbitration clauses. However, it is not in dispute that the NASD arbitration panel derived its authority over this case from the Rules of the NASD[5]. Under NASD Rule 10101, any dispute "arising out of the employment or termination of employment of associated person(s) with any member" is subject to arbitration by the NASD. Raymond James was a member-firm of the NASD, and all three defendants were "persons associated with a member" as defined by the NASD rules. See NASD Rule 0160; FINRA By-Laws Art. I, Sec. rr.

Under NASD Rule 10101, any dispute "arising out of the employment or termination of employment of associated person(s) with any member" is subject to arbitration by the NASD, In order to determine the scope of the arbitrator' s. authority over various disputes between the parties, and therefore whether Raymond James has a statutory basis for vacatur, it is necessary to determine whether and which of the disputes between the parties in this case "arose out of" their employment relationship.

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[5] Many of the NASD rules pertinent to this action have recently been revised. All of the Rules herein cited are the versions of rules which apply to cases filed before April 16, 2007.

The Fourth Circuit, in Zandford v. Prudential-Bache Securities, Inc., 112 F.3d 723, 725 (4th Cir. 1997), had occasion to interpret this phrase in the context of NYSE Rule 347, which is identical in content to NASD Rule 10101, and which contemporaneously regulates employment in the same industry, in a case with material factual similarities to this case. In Zandford, an employment dispute between the parties, governed by NASD and NYSE rules, gave rise to a settlement agreement. Zandford later filed an action in federal court alleging breach of that settlement agreement and other torts. See id. Prudential, the defendant, moved to compel arbitration of the dispute, arguing that it "arose out of" the employment relationship between the parties. See id. at 726. After the arbitrators found for Prudential and the district court confirmed the award, Zandford appealed, alleging, inter alia, that the district court was wrong to compel arbitration because the dispute did not arise out of the employment relationship between the parties. See id.

In deciding whether the disputes at issue fell within the arbitration agreement, the Fourth Circuit endorsed the majority view that "arising out of," in this context, included claims that "involve significant aspects of the employment relationship, including but not limited to explicit contractual terms." Id. at 728. (quoting Morgan v. Smith Barney, Harris. Upham & Co., 123 F.2d 1163, 1167 (8th Cir.1984)). The issue in dispute between the parties need not arise out of "the employment contract" (or the termination of the contract), but only out of employment or termination of employment, i.e., out of the employment relationship or the termination

thereof. See id. at 729. Questions of "performance either as a broker or as an employer of brokers during the time of the contractual relationship" are subject to arbitration under the NASD rule. Id. Under the generally prevailing standard, the Fourth Circuit decided that Zandford's tort claims were clearly covered by the arbitration clause because they required inquiry into conduct that occurred while Zandford was employed and the truth of statements made by the employer about events that occurred during that employment. See id. at 729-30.

The Fourth Circuit also held that Zandford's breach of contract claim for Prudential's alleged breach of the settlement agreement also met the "significant aspects" test, although it was a closer question. See id, at 730. The "critical aspect" leading to this decision was that the alleged breach of the agreement was Prudential's testimony concerning events that had occurred while Zandford was employed and his performance as an employee. Id. Furthermore Prudential's putative defense to the claim also involved an inquiry into details of Zandford's employment. See id. Thus, the Fourth Circuit held that, when taken in concert with the presumption of coverage to- which arbitration clauses are entitled, even the "attenuated" relationship between the breach of contract claim and Zandford's employment was sufficient to require arbitration of that claim. See id.

The Fourth Circuit has not had occasion to interpret the "arising out of" language since Zandford. However, at least one district court within the Fourth Circuit has used the Zandford test in interpreting that language. See Webb, v. Harris,

378 F.Supp.2d 608, 611-13 (W.D.N.C. 2005). In Webb, the court granted a motion to compel arbitration of a defamation claim based on post - termination statements made about an employee by an employer. See id. at 612. The allegedly defamatory statements concerned the employee's job performance. See id. Thus, the district court held that the dispute involved "significant aspects" of the employment relationship. Id.

The arbitrators clearly started their mission with some disputes ("causes of action") that clearly arose out of the termination of the Defendants' employment. Several other "causes of action" were considerably doubtful under both the plain meaning of the term "arising out of" and the gloss on the term applied in Zandford. Four of the seven "causes of action," having been resolved by the arbitrators in favor of Raymond James, therefore, were never at issue in this action. of the three possible "causes of action" which might have been the basis for the award, two seem to fall within the rule of Zandford (i.e., the so-called "violation of just and equitable legal principles of trade," and the alleged "interference with, and unlawful termination of [Defendants'] respective economic advantage.") However, the arbitrators did not ground their award in either of those "causes of action."

Instead, the arbitrators based their award on the alleged breach of fiduciary and legal duties. The issue then is whether that "cause of action" arose out of the employment relationship between Raymond James and the Defendants. Under the" significant aspect" test adopted and applied in Zandford, the proper inquiry appears to be *'whether the resolution of the claim depends upon evaluation of a

party's performance either as a broker or as an employer of brokers during the time of the contractual relationship." Zandford, 112 F.3d at 729 (quoting Aspero v. Shearson American Express, Inc., 768 F.2d 106, 109 (6th Cir. 1985)).

Whether Raymond James was engaged in the practice of law when its in-house lawyer represented the Defendants in the NSC Arbitration or whether, in so doing, that in-house lawyer acted under a conflict of interest does not depend on an evaluation of Raymond James' performance as an employer of brokers. Rather, as defined by the arbitrators, the issue depends on whether Raymond James was practicing law and whether the lawyer acted improperly. Thus, under the rule of Zandford, the arbitrators did not have authority to decide the "cause of action" upon which they premised the award against Raymond James. That alone is sufficient to vacate the award.

It is obvious that the scope of the language used in Zandford is broad. Therefore, even through the Court does not consider that there exists any ambiguity respecting the arbitrators authority, consideration of judicial efficiency and economy make it prudent to assess the other grounds raised by Raymond James for vacating the award.

III. Common Law Grounds for Vacatur

a. Essence of the Agreement

An arbitration award can be vacated by a district court when the award fails to draw its essence from the agreement." Patten, 441 F. 3d at 235. An award fails to draw its essence from the agreement when the arbitrator has disregarded or modified unambiguous contract provisions or must

have based an award on his own personal notions of right and wrong. See id; Upshur, 933 F.2d at 229.

This record disclose that the award entered by the arbitration panel did not draw its essence from the agreement. The various contracts between the three Defendants and Raymond James provided for at will employment, i.e. , for the right for either party to terminate the employment relationship without cause. The only qualifier on this right was the required five-day notice period. There is no dispute amongst the parties that Raymond James complied with this notice period before it terminated the employment of the Defendants. More importantly, all three contracts stated that "neither party would be significantly damaged by. . . termination" of the agreement. (Jt. Exs. 9, 10, and 11 at 3.)

Examination of the panel's reasoning, such as it is, suggests that some of the award may have been intended to compensate for damages allegedly suffered by the Defendants because of the termination of their employment. In particular, the panel's decision states that several of Raymond James actions "made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter." The termination provision of the contract expressly and unambiguously states that no conditions are necessary for termination, and no significant damages would be suffered by either party in light of the termination of the agreement. Therefore, any amount of the damages award that is based on the termination of the Defendants' employment or their inability to transfer to another Raymond James branch would have to be

vacated. See Upshur, 933 F.2d at 229; Three S, 492 F.3d 528 (an award may be vacated if it "contradict [s] the clear language of the agreement.").

However, as noted above, the arbitrators did not articulate what part of the damage award was causally liked to its perception that Raymond James' actions "made [the Defendants] transfer to other Raymond James Financial Service, Inc. branch offices impossible as a financial matter." And, in view of the two letters of clarification, it appears that the award actually was not predicated on that perception. Rather, as explained above,[6] it appears that the award was based on the breach of fiduciary and legal duties.

Read together with the original award, the letters of clarification provided by the arbitration panel teach that the basis for the panel's award to the three Defendants was that the in-house lawyer failed "to place the interests of [the Defendants] ahead of [Raymond James'] own" and that was a breach of the fiduciary duty owed by Raymond James because it was engaged in the practice of law. (Jt. Ex. 3 at 2.)

The panel stated: "It is the position of the panel that if a corporation employs a lawyer to provide legal services that corporation is then engaged in the practice of law." (Id.) This statement is essentially consistent with the panel's statement in its original opinion that Raymond James, by providing the Defendants' with legal representation, "engaged in the unauthorized practice of law," at least so far as both statements

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[6] See pp. 10-14, supra.

indicate a belief on the part of the panel that employing in-house counsel automatically transmutes any corporation into a law firm. (Jt. Ex. 2 at 3.)

This transmutation also was thought by the arbitrators to create a fiduciary relationship between the corporation and the independent contractors who were represented by the in-house counsel. (Id.) Indeed, according to the decision of the panel:

> Having assumed the role and responsibilities of legal counsel in relation to its registered representatives, [Raymond James] is held to the highest ethical obligations and fiduciary duties that would apply to a lawyer and law firm duly licensed to practice law in the Commonwealth of Virginia and engaged in business dealings with its legal client.

(Jt. Ex. 2 at 3.)

The arbitrators cited no authority for the principle on which it based the award. Nor have the Defendants provided authority for that principle. Further, the Court has found no authority that supports that principle.

Of course, the arbitration panel was not required by the NASD rules to state the reasoning for its award. However, this panel did choose to state its reasoning, and the statement of the arbitrators disclose that the award is based on a premise that has no discernable basis in law, the acquisition of fiduciary duties by Raymond James by virtue of its in-house counsel's representation of the Defendants. In other words, the source of the award given to the Defendants was nothing more than the panel members' personal views of right and wrong. Upshur, 933 F.2d at 229,

The panel's opinion reflects that the predicate for the award was the personal moral compass of the arbitrators in the observation that:

> The panel is of the opinion that [Raymond James] engaged in the unauthorized practice of law The Panel also believed that in light of the above described high fiduciary duty and ethical obligations, that withdrawal of legal representation prejudiced some of all of [the Defendants'] litigation interest.

(Jt. Ex. 2 at 3.) The imposition of a fiduciary duty on Raymond James bears striking similarity to the decision of the arbitrators in Patten, who added a statute of limitations clause to an agreement where none existed. 441 F.3d at 236. The Fourth Circuit in that case held that the arbitrator's decision was subject to vacatur based on this imposition of a legal standard that was not derived from the agreement or the law governing that agreement, but rather which was supported solely by the opinion of the arbitrators. Id. at 23 6-37. Here, the panel's finding as to Raymond James' fiduciary duty was not the agreement between Raymond James and the Defendants or the law governing the agreement, but, instead, was the individual views of the panel members, and the award is subject to vacatur on that basis.

Furthermore, even assuming, arguendo, that the panel's legal premise was correct, there is no indication, either in the record or in the panel's decision, that the alleged breach of this perceived duty caused damages to the Defendants. The panel stated that the damages suffered by the Defendants

were the result of Raymond James' breach of the "obligation" it had found to exist and that the Defendants "suffered losses pertaining to the issues for which [Raymond James] provided its lawyer," The only evidence provided to the panel as to damages were the Defendants' Joint Exhibits 6, 7, and 8, all of which detail losses to the Defendants which purportedly occurred as a result of the termination of their employment, not as to the consequence of the breach of any fiduciary duty.

Moreover, the record actually disproves the notion that the damages outlined in those exhibits was caused by the breach of the perceived breach of fiduciary or legal duties thought to constitute a conflict of interest on the part of the in-house lawyer. Indeed, the NSC Arbitration was resolved in the Defendants' favor, so there were no financial consequences to them based on the claims made against the Defendants in the NSC arbitration. Bishop, in theory, might have incurred the expense of retaining other counsel after the Raymond James in-house counsel withdrew, but the record contains no evidence to support a finding that Bishop incurred such expense, or if he did, in what amount.

There is a statement in the arbitrators' original opinion that "withdrawal of legal representation during a pending arbitration . . . predjudiced some or all [Defendants'] litigation interest." (Jt. Ex. 2 at 3.) However, the record is clear that representation was withdrawn only from Bishop, and not from either Hamant or Scanlon. Of course, the Court is not conducting a review under a standard which allows overturning the award based on factual inaccuracy, but the panel's errors respecting the

facts respecting the damages is relevant to whether there is a basis for the award, which is a question this Court is empowered to entertain. See Patten, 441 F.3d at 234.

These evidentiary failures distinguish this case from cases such as Apex Plumbing, in which the arbitrators relied on evidence that compelled a result contrary to the express terms of the agreement. See 142 F.3d at 194. Instead, in this case, the arbitrators had no evidence supporting the damages that they awarded to the Defendants. Therefore, there is no manner in which this award can be rationally derived from the agreement.

Taken as a whole, it is clear that the source for the panel's award was not the agreement between the parties or the law governing the agreement, but was, instead, the personal views of the arbitrators. But, even if it could be said that there is a legal basis for the imposition of liability, there was. no proof that the Defendants suffered any damages as a consequence thereof. Thus, the award is subject to vacatur for that reason as well.

b. Manifest Disregard for the Law

A party seeking vacatur of an arbitrator's decision based on manifest disregard for the law has a very heavy burden. Three S, 492 F.3d at 527. Not every misunderstanding of law demonstrated by the arbitration panel is a sufficient basis for vacating the panel's decision. An arbitration award is subject to vacatur by a reviewing district court only if the arbitrator demonstrated a manifest disregard for the law. See Three S, 492 F. 3d at 527. Mere misapplication of the law is an insufficient basis upon which to vacate an arbitration award. Id. An arbitrator demonstrates manifest disregard

for the law when the arbitrators "were aware of the law, understood it correctly, found it applicable to the case before them, and yet chose to ignore it in propounding .their decision." Id, (quoting Remmey, 32 F.3d at 149).

Raymond James argues that the arbitration panel has demonstrated manifest disregard for the law concerning breach of fiduciary duties. (Pl. Mem. at 10.) That argument focuses on the lack of any evidence that the perceived breach of fiduciary duty caused the damages that were awarded.

The arbitration panel was certainly aware of and understood the legal principle that, under Florida law (which governs the contracts) , in order for a claimant to recover on a claim of a breach of fiduciary duty, the claimant must have suffered damages caused by that breach. See Patten, v, Winderman, 965 So. 2d 1222, 1224 (Fla. App. 4. Dist. 2 0 07) (citing Gracey v. Baker, 837 So.2d 348, 3 53 (Fla. 2002)). Three facts demonstrate that the arbitration panel must have known of this legal principle.

First, Raymond James correctly informed the panel of the principle in its Motion to Dismiss, which the arbitrators ruled on and, therefore, must have read. (Jt. Ex. 5 at 12.) Second, the arbitrators are licensed attorneys, and knowledge of the causation element of a fiduciary damages claim is hornbook law and required knowledge for admission to the bar. Finally, the arbitrators themselves acknowledged that the principles of causation and the necessity of demonstrating damages apply; [Raymond James] failed in that obligation and the [Defendants] suffered losses pertaining to the

issues for which [Raymond James] provided its lawyer." (Jt. Ex. 3 at 2 .) Therefore, the first three elements of the test to establish manifest disregard knowledge, understanding, and application - have been satisfied by Raymond James. See Three S, 492 F.3d at 527,

Despite knowing, understanding, and finding applicable the law concerning damages stemming from a breach of fiduciary duty, the arbitration panel failed to apply it. See Three S, 492 F.3d at 527. As discussed above, the only evidence of damages presented to the arbitration panel concerned damages caused by the purportedly unfair termination of the Defendants. Nothing on the face of the Statement of Claims or in any document filed by the Defendants' establishes any damages caused to them because of a breach of fiduciary duty. Furthermore, the record reveals no harm caused to the Defendants on the basis of any of Raymond James' actions, whether or not Raymond James had a fiduciary duty to the Defendants.

The panel identified the source of the damages as "losses pertaining to the issues for which [Raymond James] provided its lawyer." (Jt. Ex. 3 at 2 .) That reference can only be to the NSC Arbitration. The problem with such a finding is that that arbitration was decided in the Defendant's favor and Hamant and Scanlon's representation in that matter was provided by Raymond James throughout that arbitration. The NSC arbitration was settled with no liability to Bishop. Therefore, the Defendants could not have suffered any damages based on the NSC Arbitration, whether or not they were included in

communications and settlement negotiations surrounding that arbitration. (Jt. Ex. 2 at 3.) Bishop conceptually might have incurred legal expense which conceptually might be asserted as damages if the in-house lawyers withdrawal was wrongful However, the arbitration panel did not base its award on a finding that the withdrawal of representation was wrongful and, in any event, there was no evidence that Bishop incurred legal fees following the withdrawal, or, if so, in what amount. (Jt. Ex. 3 at 2.)

In its original opinion, but not its clarifications, the arbitration panel also mentions that the Raymond James violated the supposed fiduciary duty it owed to the Defendants by failing to inform them that they were under heightened supervision or that Raymond James intended to terminate them. (Jt. Ex. 2 at 3.) As an initial matter, Raymond James had no duty to inform the Defendants of its intention to terminate them outside the five-day notice period provided for in the association contracts and the record indicates that notice was provided in accordance with those contracts. Further, there is no evidence in the record that the Defendants were damaged by not being notified of this heightened supervision or of Raymond James' intention to terminate them. It is, in fact, difficult even to hypothesize any sort of damage that the Defendants might have suffered because of those failures to notify, and the Defendants have not provided any indication to the Court as to what those damages might be. Therefore, even if Raymond James did violate a fiduciary duty by failing to notify or communicate with the Defendants, the Defendants were not

entitled to any award based on that breach, because they failed to demonstrate that the suffered any damages caused by the failure to notify them of the "heightened supervision" or the intent, to terminate. Little, 652 S.E.2d at 140-41.

This is not a case such as Remmey, wherein the arbitrators made a reasoned decision based on conflicting relevant evidence and a mere misapplication of the law. See 32 F. 3d at 150. Instead, the arbitration panel in this case failed to apply the legal standards of causation and damages, despite knowing that those principles applied and after having stated that they should be applied. Hence, the arbitration panel demonstrated manifest disregard for the law in its handling of the issues of damages caused by Raymond James breach of its supposed fiduciary duty to the Defendants. The arbitration award must be vacated on that ground as well, Upshur, 933 F.2d at 229.

CONCLUSION

For the foregoing reasons, the RENEWED MOTION TO VACATE (Docket No. 48) will be granted and the award, will be vacated. For the same reasons, the Defendants' motions to confirm the arbitration panel's award (Docket Nos. 53 and 56) are denied.

The Clerk is directed to send a copy of this Memorandum Opinion to all counsel of record.

It is so ORDERED.

/s/

Senior United States District Judge

Richmond, Virginia

Date: December 17, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

RAYMOND JAMES FINANCIAL
SERVICES, INC. ,
Plaintiff,

v. Civil Action No. 3:07cv28

THOMAS W. BISHOP,
STEVEN H. HAMANT, and
TIMOTHY E. SCANLON,
Defendants.

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, it is hereby ORDERED that the RENEWED MOTION TO VACATE (Docket No. 48) is granted and the award of arbitration entered in favor of the Defendants on December 12, 2006 is vacated; and the motion to confirm arbitration award filed by Thomas W. Bishop (Docket No. 53) and defendants' Hamant and Scanlon' s motion to confirm arbitration award (Docket No. 56) is denied.

The Clerk is directed to send a copy of this Order to all counsel of record.

It is ORDERED

/s/

Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: December 17, 2008

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RAYMOND JAMES FINANCIAL SERVICES, INCORPORATED,

Plaintiff-Appellee,

v.

THOMAS W. BISHOP; STEVEN H. HAMANT; TIMOTHY E. SCANLON,

Defendants-Appellants.

No. 09-1038

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Robert E. Payne, Senior District Judge.
(3:07-cv-00028-REP)

Argued: October 27, 2009

Decided: February 22, 2010

Before WILKINSON, DUNCAN, and DAVIS,
Circuit Judges.

Affirmed by published opinion. Judge Davis wrote the opinion, in which Judge Wilkinson and Judge Duncan joined.

COUNSEL

ARGUED: Jay J. Levit, LAW OFFICE OF JAY J. LEVIT, Glen Allen, Virginia; Scott Gregory Crowley, Sr., CROW-

LEY & CROWLEY, Richmond, Virginia, for Appellants. Stephen Grey Cochran, HAIGHT, TRAMONTE, SICILIANO, FLASK & YEONAS, PC, Vienna, Virginia, for Appellee. **ON BRIEF:** Victor M. Glasberg, VICTOR M. GLASBERG & ASSOCIATES, Alexandria, Virginia, for Appellee.

OPINION

DAVIS, Circuit Judge:

This is an appeal from an order of the district court vacating an award of compensatory damages rendered by an arbitration panel adjudicating claims pursuant to the rules of the National Association of Securities Dealers ("NASD").[1] The award was in favor of three financial advisors, Appellants Thomas W. Bishop ("Bishop"), Steven H. Hamant ("Hamant"), and Timothy E. Scanlon ("Scanlon") against the Appellee, Raymond James Financial Services, Inc. ("Raymond James"), a broker/dealer member of NASD. The Appellants contend that the district court erred in exceeding the narrow scope of review prescribed by the Federal Arbitration Act. *See* 9 U.S.C. § 10(a). We are mindful that *vacatur* of an arbitration award is, and must be, a rare occurrence because a federal court employs a standard of review "among the narrowest known at law." *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 193 (4th Cir. 1998). Nonetheless, we conclude, as did the district court, that this case presents one of those rare instances. Accordingly, for the reasons stated within, we affirm the judgment of the district court.

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[1]NASD has been succeeded by FINRA ("Financial Industry Regulatory Association"), but the events material to this case occurred prior to the reincorporation of NASD as FINRA.

I.

The Appellants are registered representatives working as financial advisors in the securities industry in the Richmond, Virginia, area. In early 2001, Bishop departed from his then-firm and entered into a written "Independent Sales Associate Agreement" with Appellee Raymond James Financial Services, Inc. ("Raymond James"), a registered broker/dealer. Bishop became the branch manager at a Raymond James Richmond office. At about the same time, apparently at Bishop's urging, Hamant and Scanlon each entered into a separate written "Financial Advisor Agreement" with Raymond James and practiced their trade out of the Richmond office headed by Bishop.

Each of the three agreements described the individual financial advisor as an "independent contractor." Moreover, each of the three agreements contained the following "Termination of Agreement" provision permitting any party to terminate the agreement on five days notice:

> Either party may terminate this Agreement by providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement. Given the unique transactional nature of the securities business, there is no need for a liquidated damages provision should either party voluntarily terminate the Agreement before the end of its term as neither party would be significantly damaged by such termination.

J.A. 274, 282, 290-91. The agreements contained no general arbitration provision;[2] as a member of NASD, however, Ray-

[2]Indeed, each of the agreements contained a forum selection clause reciting that "all legal proceedings under this Agreement will be held in Pinellas County, Florida." J.A. 278, 286, 297. The agreements also contained a provision for "Indemnification." The indemnification provision

mond James was required to resolve certain disputes with its registered representatives by arbitration.

During 2003, Raymond James received several serious complaints of misconduct from competing financial advisors with respect to the operation of the office headed by Bishop.[3] As a result of the mounting complaints, on April 27, 2004, Raymond James notified Bishop and his co-manager at the Richmond branch, Michael Finnie, that the branch would be closed and that their registrations with Raymond James were being terminated in five days. Raymond James acted specifically pursuant to the "Termination of Agreement" provision in its Independent Sales Associate Agreement. Raymond James left open the possibility that the representatives in the Richmond branch, including Appellants, could affiliate with another Raymond James branch. Indeed, Bishop's co-manager, Finnie, promptly re-affiliated with another Raymond James branch. On June 25, 2004, however, after a two-month extension of time by Raymond James in effecting the branch closing, the Appellants voluntarily terminated their respective agreements and they did not re-affiliate with Raymond James.[4]

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provided, in part, that "[r]esponsibility under [the indemnification provision] shall, if not mutually agreed upon, be determined by arbitration before the NASD." J.A. 278, 288, 295-96. There is no suggestion in the record that any aspect of the award under review related in any manner to a claim for indemnification.

[3]On March 7, 2003, for example, Gary Stewart ("Stewart"), the branch manager at a competing broker/dealer, wrote to Raymond James to complain that Bishop had disclosed confidential information about Stewart and had otherwise engaged in unlawful and unethical behavior. (In 2004, Stewart filed an arbitration claim against Bishop and Raymond James alleging libel and tortuous interference.) Also, on May 28, 2003, Steve Tanton, another Richmond-area investment professional, filed a NASD arbitration claim against Raymond James, Scanlon, and Hamant for defamation, tortuous interference, conspiracy, and securities violations.

[4]The Appellants contend that they were impeded by Raymond James management officials in their efforts to re-affiliate with a different branch office.

Meanwhile, prior to the Appellants' resignations, a lawyer from Raymond James' legal department, Terrance Bostic, Esq., had assumed representation of the Appellants (jointly with his representation of Raymond James) in the NASD arbitration proceedings arising from some of the complaints lodged against the Richmond office staff. Such representation of the Appellants continued after the Richmond branch closed. In due course, the arbitration proceedings against Scanlon concluded in his favor while he was represented by Bostic, whereas Hamant personally paid $10,000 in respect to a NASD arbitration award against him. J.A. 262.[5]

The arbitration proceeding involving Bishop was ongoing as of December 1, 2004. On that date, Bostic withdrew as counsel for Bishop (while continuing as counsel to Raymond James) based on an incipient conflict of interest. Specifically, the conflict of interest arose when Raymond James discovered that someone had obtained unauthorized access to its computer system; legal action against Bishop was contemplated in connection with the incident.[6] In any event, within just a few days after Bostic withdrew from his representation of Bishop,

[5]The district court determined that the arbitration proceeding against Hamant concluded "favorably to [Hamant] while [he] was represented by the Raymond James in-house lawyer." J.A. 383. The Appellants have not challenged that finding by the district court before us. Nevertheless, before the arbitrators, Hamant had alleged that he personally paid a $10,000 award against him. It may well be that these two arbitration proceedings were separate and distinct proceedings.

[6]On November 30, 2004, Finnie, who had reaffiliated with another Raymond James office, received an automated email message that his password had been changed, although he had not changed his password. An internal investigation by Raymond James revealed that the password change originated from a computer in Bishop's new office. Accordingly, Raymond James concluded that Bishop or one of his colleagues had accessed Raymond James' computer system without authorization, changed Finnie's password, and gained access to customer records. Raymond James notified the Federal Bureau of Investigation about the incident.

the parties to the pending arbitration proceeding reached a global settlement resulting in no liability to Bishop.

II.

In July 2005, the Appellants filed a consolidated arbitration demand against Raymond James pursuant to NASD rules. Specifically, the Appellants sought damages on the basis of the following legal theories: (1) wrongful discharge; (2) breach of contract; (3) tortious interference with contract; (4) common law and statutory conspiracy; (5) violation of the Virginia Retail Franchising Act; and (6) violation of "just and equitable principles of trade." Thereafter, Raymond James submitted its Answer, Affirmative Defenses, and Counterclaims, and a Motion to Dismiss, which the Appellants opposed.

On May 11, 2006, the arbitration panel denied Raymond James' Motion to Dismiss. Then, on December 12, 2006, following a hearing extending over several days, the arbitration panel found Raymond James liable. In its award, the arbitration panel summarized the Appellants' claims as follows:

> breach of fiduciary and legal duties; violation of just and equitable legal principles of trade; breach of promises and inducements; interference with, and unlawful termination of [the Appellants'] prospective economic advantages; interference with the performance of contractual promises and inducements; tortious and deceitful termination of [the Appellants'] legitimate and high business expectations; violation of statutory Virginia public policy set forth in Virginia code § 13.1-558; and common law and statutory conspiracy.

J.A. 353. The panel granted the following substantial compensatory damages to the Appellants: Bishop, $156,050; Hamant, $74,050; and Scanlon, $72,050. J.A. 354.

By way of explanation for its award, the panel cited Raymond James' "unauthorized practice of law [sic] by employing staff counsel to advise and represent [Appellants] in their individual capacities" in NASD arbitrations. J.A. 354. The panel also found that Raymond James failed to warn the Appellants that they were subjected to heightened scrutiny after Raymond James received complaints about them. *Id.* The panel further found that Bostic's withdrawal from Bishop's representation in the arbitration prejudiced "some or all [Appellants'] litigation interest and made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter." *Id.*

On January 12 and 18, 2007, Raymond James filed in the United States District Court for the Eastern District of Virginia a timely Motion to Vacate the Award, and an Amended Motion to Vacate, respectively. The Appellants filed timely Motions to Confirm the Award.

On July 26, 2007, the district court held a hearing. The court noted the lack of clarity in the arbitration panel's explanation for its award, and in particular, among other things, the peculiar manner in which the arbitration panel seemed to treat the claims of all three of the Appellants identically, although the factual circumstances and background as to Bishop, on the one hand, and Hamant and Scanlon, on the other hand, were quite different. When the district court asked counsel for the latter two to identify Raymond James' actionable conduct as to his clients (Hamant and Scanlon), counsel indicated that the actionable conduct was wrongful termination. When the court asked counsel how any termination could be "wrongful" in light of the "Termination of Agreement" provision included in each written agreement, which on its face provided for termination at-will on five days notice, counsel argued that the law in the NASD securities industry requires that, irrespective of the parties' agreement, termination of a registered representative could only be for cause.

Ultimately, despite its best efforts to discern some coherence in the award, the district court concluded that it could not do so and remanded the matter to the arbitration panel.[7] Appellants filed an interlocutory appeal to this court from the district court's remand order. On April 2, 2008, we dismissed the appeal for lack of jurisdiction.

On April 11, 2008, the arbitration panel issued a supplemental letter opinion in response to the district court's remand order. Therein, the arbitrators stated the following bases for its award:

> (1) Raymond James provided legal representation to the Appellants "in a matter involving a business relationship between the employer and [the Appellants] that was also adversarial with a clear conflict of interest;" (2) Raymond James' "attorney favored the interest of [Raymond James] to the disadvantage of the [Appellants,] who were also his clients;" (3) "if a corporation employs a lawyer to provide legal services that corporation is then engaged in the practice of law. . . . As such, it is held to the same standard as a law firm and owes to its client the highest degree of fiduciary duty. If it chooses to engage in the business with such clients, it is obligated to place the interest of those clients ahead of its own. [Ray-

[7]The court found it "dubious" that Raymond James engaged in the "unauthorized practice of law" simply by permitting in-house counsel to represent the Appellants in arbitrations initiated by third parties jointly against Raymond James and its registered representatives. J.A. 394-400. Furthermore, the court questioned the arbitration panel's finding that Raymond James had assumed the role of legal counsel for Appellants and was therefore "held to the highest [of] ethical obligations and fiduciary duties." J.A. 116. The court reasoned that since Bostic, and not Raymond James, represented the Appellants, any fiduciary duty owed to the Appellants was owed only by him. In short, given the lack of clarity in the award, the court found it impossible to conduct meaningful, even if limited, judicial review.

> mond James] failed in that obligation and the [Appellants] suffered losses pertaining to the issues for which [Raymond James] provided its lawyer."

J.A. 362-63.

On April 24, 2008, Raymond James filed a Renewed Motion to Vacate in the district court. Then, in a June 4, 2008 letter, the arbitration panel supplemented its supplemental opinion, stating that "[t]he unauthorized practice of law was one among other factors considered by the panel and that considering the case as a whole [it] believes the liability decision to be just and appropriate." J.A. 365.

After further briefing by the parties, the district court issued its Memorandum Opinion on December 18, 2008. The court summarized its earlier reasoning that had prompted it to remand the matter to the arbitration panel. J.A. 380-91. The court went on to find that "[l]ike the original award, the letters of clarification are not really very clear at all respecting the legal basis for the finding of liability. Nor do they articulate the causal link between the perceived liability and the monetary award." J.A. 391.

Noting that the arbitration panel had expressly stated that "any and all claims [sic] relief not specifically addressed herein, including Claimants' requests for punitive damages, are denied," J.A. 388 (quoting arbitration award, J.A. 354), the district court concluded that the following legal theories had been rejected by the arbitration panel: "breach of promises and inducements; interference with the performance of contractual promises and inducements; violation of statutory public policy set forth in Va. Code § 13.1-558; [and] common law and statutory conspiracy." J.A. 389. Consequently, the court concluded, the award must have been based on one or more of the following theories: "breach of fiduciary and legal duty; violation of just and equitable principles of trade;

and interference with, or unlawful termination of, [the Appellants'] respective economic advantage." *Id.*

The court identified the precedents from this court setting forth the statutory and extra-statutory grounds on which an arbitration award might be found infirm. Under the Federal Arbitration Act, it noted, an award may be vacated where the arbitrator "exceeded his powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made." *See* 9 U.S.C. § 10(a)(4). Moreover, consistent with longstanding precedent in this circuit, the court observed that an award might be vacated on extra-statutory grounds where an arbitrator displayed a "manifest disregard of the law" and where the award "failed to draw its essence" from the parties' agreement. J.A. 394-411.

Ultimately, the court concluded that the award here should be vacated on all three grounds. First, the court concluded that the arbitration panel exceeded its powers as proscribed by § 10(a)(4). This conclusion was grounded in the court's determination that the arbitrators clearly based their award of compensatory damages to the Appellants on Raymond James' alleged "breach of fiduciary and legal duties" surrounding the termination of their affiliation with Raymond James. Consequently, the court analyzed the award under *Zandford v. Prudential-Bache Secs., Inc.*, 112 F.3d 723 (4th Cir. 1997), and concluded the arbitrators clearly exceeded the authority granted them by that case to adjudicate a dispute "arising out" of the termination of a financial advisor in the securities industry. The court found this alone to be reason enough to vacate the award.

Next, the court concluded that, even assuming a claim for "breach of fiduciary duty" could be prosecuted separately from the Appellants' claim of "wrongful termination," the panel demonstrated a "manifest disregard of the law." This conclusion was based on the court's finding that the arbitrators were aware of and understood the legal maxim that,

under Florida law (which the parties agree governs the written agreements at issue), in order for a claimant to recover on a claim of breach of fiduciary duty, the claimant must have suffered damages.[8] J.A. 408 (citing *Patten v. Winderman*, 965 So. 2d 1222, 1224 (Fla. Dist. Ct. App. 2007)). Thus, the court found that the arbitrators were aware of the law, understood it correctly, and found it applicable to the case before them. The court found that the arbitrators knowingly failed to apply the law here, however, because the only evidence of damages presented to the arbitration panel related to their alleged "wrongful termination" by Raymond James and not to any "breach of fiduciary duty."[9]

Finally, the court concluded that the award "failed to draw its essence" from the written agreements between the parties because the arbitrators either disregarded or modified unambiguous contract provisions or based the award on their own personal notions of right and wrong. That is, the court concluded that the written agreements between the parties were termination-at-will contracts. The arbitration panel's award, however, inappropriately seemed to compensate the Appellants for termination of their employment. Accordingly, the court held that any damages award based on the termination of the Appellants' affiliation with Raymond James or their

[8]The court noted the following: (1) that Raymond James correctly informed the panel of the controlling legal doctrine (in its Motion to Dismiss); (2) that the arbitrators are licensed attorneys and should know this basic principle of law; and (3) that the arbitrators acknowledged the principles and necessity of demonstrating damages. J.A. 408.

[9]Specifically, the court found that the Appellants suffered no injury or damage as a consequence of their representation by in-house counsel: Hamant and Scanlon's arbitration proceedings were resolved in their favor, and the arbitration was settled with no liability to Bishop. As to whether Raymond James violated a "fiduciary duty" by failing to inform the Appellants that they were placed under "heightened supervision" as a result of the complaints about the Richmond branch, the court found that no such duty was owed to Appellants and, implicitly, that the arbitration panel exceeded its power to the extent it purported to identify any such duty.

inability to transfer to another Raymond James branch would have to be vacated.

Ultimately, the court concluded that to the extent the panel's award was based on a breach of fiduciary duty, the mere fact that Raymond James' in-house counsel provided representation to the Appellants in the third-party arbitration proceedings did not transmute Raymond James "into a law firm." J.A. 403. The district court recognized that the arbitration panel was not required to state the reasons for its award, but that it had voluntarily done so. And, given that the panel's award had no basis in law, the court found that the panel's award merely reflected the panel's personal views of right and wrong. Even if there was a breach of some duty, the court found no discernable damage caused by this breach.

Accordingly, Raymond James' Renewed Motion to Vacate was granted and the award was vacated. The Appellants have timely appealed and we have jurisdiction pursuant to 28 U.S.C. § 1291.

III.

We review the district court's findings of fact for clear error and its conclusions of law, including its decision to vacate an arbitration award, *de novo*. *Choice Hotels Int'l, Inc. v. SM Prop. Mgmt., LLC*, 519 F.3d 200, 207 (4th Cir. 2008) (citation omitted). We review the court's decision to remand an award to an arbitrator for abuse of discretion.

As we have made clear repeatedly:

> Judicial review of an arbitration award in federal court is "substantially circumscribed." *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 234 (4th Cir. 2006). In fact, the scope of judicial review for an arbitrator's decision "is among the narrowest known at law because to allow full scrutiny of such

> awards would frustrate the purpose of having arbitration at all-the quick resolution of disputes and the avoidance of the expense and delay associated with litigation." *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 193 (4th Cir. 1998). Indeed, as we have emphasized, in reviewing such an award, "a district or appellate court is limited to determine whether the arbitrators did the job they were told to do-not whether they did it well, or correctly, or reasonably, but simply whether they did it." *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir. 1994) (internal quotation marks omitted).

Three S Delaware, Inc. v. DataQuick Info. Sys., Inc., 492 F.3d 520, 527 (4th Cir. 2007).

IV.

On appeal, the Appellants emphasize the highly circumscribed standard of federal courts' review of arbitration awards. They argue that, although no error by the arbitration panel is shown in any event, at most what the record shows are mere errors of fact and/or of law which provide no basis for judicial intervention. They argue, further, that when the parties submitted their dispute to the process of arbitration, they agreed to accept the arbitration award as final, save extraordinary circumstances. The Appellants argue that no such extraordinary circumstances existed here. Raymond James urges affirmance on any or all of the grounds identified by the district court. We conclude that Raymond James has the better of the argument and find that the award cannot withstand the deferential review mandated by 9 U.S.C. § 10(a).

A.

We conclude first that the district court did not abuse its discretion in remanding the award to the arbitration panel for

clarification of the bases of the award. Like the district court, we believe the original award is sufficiently inscrutable that it was reasonable to seek clarification of the basis for the award from the arbitration panel. It is true, of course, that an arbitrator need not explain her award. *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597-98 (1960). Furthermore, we are mindful of a potential danger in such remands: "courts must approach remand to the arbitrator with care lest the arbitrator believe that a 'remand' is equivalent to 'retrial' with an expectation of an opposite result the second time around." *Randall, a Div. of Textron, Inc. v. Lodge No. 1076, Int'l Ass'n of Machinists and Aerospace Workers*, 648 F.2d 462, 468 (7th Cir. 1981). At the same time, however, as one court has noted, "[r]emand to an arbitrator for clarification and interpretation is not unusual in judicial enforcement proceedings." *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 n.1 (9th Cir. 1982.).

Given the evident incoherence of the explanation that was volunteered by the arbitration panel in this instance, we do not fault the district court in its commendable efforts to seek guidance through a remand, guidance that would enable the court to conduct the limited judicial review to which Raymond James was entitled.

> [O]nce the reasons that are given [by an arbitrator] strongly imply that the arbitrator may have exceeded his or her authority under the submission and contract whether that implication appears in the form of vague or inconsistent results or possible extensions beyond the terms of the contract the device of remand is appropriate to avoid having courts rather than the arbitrator clarify the bases for the initial determination.

Randall, 648 F.2d at 468.

B.

As described above, the Appellants crafted a veritable smorgasbord of legal theories in support of their quest for compensatory damages. This seems to have been a sound tactic. Nevertheless, the record is clear that the Appellants have insisted throughout these proceedings that the gravamen of their claims for damages was an alleged "wrongful termination" of their affiliations with Raymond James. To be sure, on the face of the record, it is exceedingly obscure, to say the least, as to how a wrongful termination might arise (1) inasmuch as their respective agreements with Raymond James were independent contractor agreements containing the "Termination of Agreement" provision quoted above in Part I of this opinion, and under circumstances in which (2) the Appellants voluntarily terminated the agreements themselves.

Notwithstanding that the Appellants' fundamental claim was one for wrongful termination, we agree with the district court that the award in this case cannot be understood as based on anything other than the arbitrators' finding that Raymond James committed a breach of "fiduciary and legal duties" when its in-house lawyer, Bostic, provided legal representation to the Appellants in third-party arbitration proceedings. J.A. 389. In so concluding, the arbitration panel clearly "exceeded [its] power" within the contemplation of 9 U.S.C. § 10(a)(4).[10]

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[10]The Federal Arbitration Act provides that a federal court may vacate an arbitration award on the following grounds:

> (1) the award was procured by corruption, fraud, or undue means; (2) partiality or corruption in the arbitrators; (3) the arbitrator was guilty of misconduct or misbehavior in conducting the hearing in a manner which prejudiced a party's rights; or (4) the arbitrator exceeded his powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

The Appellants correctly contend that, although the parties' agreements allowed Raymond James to terminate each agreement without cause and at will, all of the parties here were covered by former NASD Rule 10101.[11] Rule 10101 provides a measure of protection for registered representatives affiliated with broker/dealers such as Raymond James. It was on the authority of the expansive language of Rule 10101 that the Appellants asserted their claims against Raymond James.

In *Zandford v. Prudential-Bache Securities, Inc.*, we examined the scope of claims asserted under New York Stock Exchange Rule 347 ("NYSE Rule 347"), which, in language identical to that in Rule 10101, provided for arbitration of "[a]ny controversy . . . arising out of the employment or termination of employment" of registered representatives. 112 F.3d 723 (4th Cir. 1997).

Prudential terminated Zandford, one of its registered representatives, and commenced an arbitration against Zandford to recover payment of an outstanding loan. *Id.* at 725. Zandford counterclaimed. *Id.* The parties reached a settlement agreement. Thereafter, alleging that Prudential had breached the settlement agreement, Zandford brought an action in federal court, alleging contract and tort claims against Prudential. *Id.* at 726. The federal district court ordered arbitration of Zandford's claims, and an arbitration award favored Prudential. Zandford returned to court seeking to vacate the award; instead, the district court confirmed the award. *Id.*

Upon Zandford's appeal to this court from the confirmation of the award, we affirmed and held that all of Zandford's tort

[11]The current version of former NASD Rule 10101 is now a part of the Financial Industry Regulatory Authority, Inc.'s "Code of Arbitration Procedure." The operative language is unchanged; it provides, in relevant part: "for the arbitration of any dispute, claim, or controversy . . .arising out of the employment or termination of employment of associated person(s) with any member . . . (b) between or among members and associated persons."

and contract claims were covered by the NYSE Rule 347 arbitration clause because they arose out of Zandford's employment with Prudential. *Id.* at 729-30.[12]

We adopted a test fashioned by the Eighth Circuit and embraced by many courts to hold that arbitration of a dispute is required — i.e., that a dispute "arises out of employment or termination of employment," where the claims "involve significant aspects of the employment relationship, including but not limited to explicit contractual terms." *Id.* at 728-29 (quoting *Morgan v. Smith Barney, Harris Upham & Co.*, 729 F.2d 1163, 1167 (8th Cir. 1984)). Under *Morgan*'s "significant aspects" test, the source from which arbitrable disputes arise is not "the employment (or termination of the employment) contract" but "simply employment or termination of employment." *Id.* at 729 (citing *Morgan*, 729 F.2d at 1167). We reasoned that "the proper question is whether resolution of the claim depends upon evaluation of a party's performance either as a broker or as an employer of brokers during the time of the contractual relationship." *Id.* at 729 (citing *Aspero v. Shearson American Express, Inc.*, 768 F.2d 106, 109 (6th Cir. 1985); *Fleck v. E.F. Hutton Group, Inc.*, 891 F.2d 1047, 1053 (2d Cir. 1989)).

In the case before us, the district court applied *Zandford* and concluded that issues surrounding Raymond James' alleged "practice of law" and the resulting alleged breach of "fiduciary and legal duties" did not fit within the framework of arbitrable claims under the Rule 10101 analogue to NYSE Rule 347. Thus, it determined that the arbitrators lacked the

[12]Although, unlike the facts here, Zandford's agreement with Prudential contained an arbitration clause, the releases exchanged in connection with the settlement agreement had extinguished the parties' rights and duties under the employment agreement. *See* 112 F.3d at 727 ("[I]t is clear and indeed not disputed that Zandford cannot be called upon to arbitrate any matter on the authority of the arbitration clause included in the employment agreement."). Thus, the NYSE rule was the sole source of any duty to arbitrate and of the power of the arbitrators to adjudicate claims.

authority to address this "cause of action," the very claim on which the panel premised the award of compensatory damages to the Appellants.

We agree with the district court. As we have noted, here the arbitrators based their award on Raymond James' alleged breach of "fiduciary and legal duties" in connection with their joint representation with Raymond James by Bostic, the in-house lawyer. Under the *Zandford* "significant aspects" test, the appropriate question here "is whether resolution of the claim depends upon evaluation of a party's performance either as a broker or as an employer of brokers during the time of the contractual relationship." 112 F.3d at 729 (citations omitted). The panel's assertion that Raymond James acted improperly as a "lawyer" is inconsistent with the notion that Raymond James was acting as an "employer of brokers during the time of the contractual relationship." There is nothing whatsoever in the serial explanations provided by the arbitration panel to support the conclusion that the legal theory the panel found sustained required an evaluation of any party's "performance." Even after the district court ordered a remand to the panel, the panel simply reiterated what seemed inescapable from the original award: that the panel had adjudicated a tort claim that fell outside of the expansive interpretation of "arising out of employment" we adopted in *Zandford*.

Thus, the arbitration panel committed no mere error of law. Rather, by rendering an award whose underlying legal basis exceeded the bounds of arbitrable employment-related disputes cognizable under NASD Rule 10101 as interpreted (by analogy) in *Zandford*, the panel "exceeded [its] powers" under 9 U.S.C. § 10(a)(4).[13]

[13]The Supreme Court's decision in *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008), has generated considerable uncertainty among the lower federal courts as to the continuing viability of extra-statutory grounds for vacating arbitration awards. *See Andorra Svcs. Inc., v. Venfleet, Ltd.*, No 08- 4902, 2009 WL4691635, at *4 n.5 (3d Cir. Dec.

C.

The Appellants seek to avoid this result with two arguments, each of which we find unpersuasive. First, they seem to contend that once the arbitration panel's "jurisdiction" was established pursuant to Rule 10101, the panel was entitled under the expansive rubric of "just and equitable principles of trade" to interpret the propriety of Raymond James' overall conduct towards the Appellants.[14] Thus, according to the Appellants, the acts and omissions of Raymond James' in-house lawyer in undertaking joint representation of the Appellants in the NASD arbitration proceedings was a fair ground

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10, 2009) ("Our sister circuits have expressed varying views on the impact of *Hall Street*. *Compare Telenor Mobile Commc'ns AS v. Storm LLC*, 584 F.3d 396, 407 n.6 (2d Cir. 2009) ("[W]e [previously] read Hall St. to hold that the FAA set forth the 'exclusive' grounds for vacating an arbitration award, and that the term 'manifest disregard' was merely a 'judicial gloss' on some of those grounds."), *with Citigroup Global Mkts., Inc. v. Bacon*, 562 F.3d 349, 355 (5th Cir. 2009) ("[T]o the extent that manifest disregard of the law constitutes a nonstatutory ground for vacatur, it is no longer a basis for vacating awards under the FAA.")). In view of our conclusion that the district court's order vacating the award in this case should be affirmed under 9 U.S.C. § 10(a)(4), we find it unnecessary to consider the effect of *Hall Street*.

[14]Congress imposed a "just and equitable principles of trade" requirement in the Exchange Act of 1934. *See* 15 U.S.C. § 78f(b). As the so-called "J & E" rule, NASD codified the principle in its Rule 2110: "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." The J & E Rule is a mainstay in private and governmental enforcement efforts in the policing of securities markets, and is universally regarded as imposing high *ethical* standards on commercial actors in the market. *See, e.g.*, *In the Matter of the Application of Timothy L. Burkes*, 51 S.E.C. 356, 1993 WL 119769, at *3 (Apr. 14, 1993) ("As the Commission has stated previously, disciplinary hearings to require compliance with 'high standards of commercial honor and just and equitable principles of trade' are ethical proceedings; hence the concern is with ethical implications of the Applicant's conduct."). Contrary to the Appellants' suggestion, the J & E principle did not expand the powers of the arbitration panel in this case beyond the boundaries set by *Zandford*.

for decision and for an award of compensatory damages, regardless of how attenuated such acts and omissions might be from any party's "performance either as a broker or as an employer of brokers during the time of the contractual relationship."[15] We reject this contention as flatly inconsistent with our holding in *Zandford*.

Second, the Appellants contend that, under the reasoning in two cases from the Seventh and Eighth Circuits, because Raymond James was required under Rule 10101 to arbitrate claims "arising out of" the termination of Appellants' affiliation, it simply lacked the authority to terminate their affiliations without cause. *See Shearson Hayden Stone, Inc. v. Liang*, 653 F.2d 310, 313 (7th Cir. 1981) ("It has been held repeatedly that an agreement to arbitrate disputes about employee discharges implies a requirement that discharges be only for 'just cause.'"); *PaineWebber, Inc. v. Agron*, 49 F.3d 347, 352 (8th Cir. 1995) (stating that "[NASD arbitration] necessarily alters the employment relationship from at-will to something else-some standard of discernable cause is inherently required in this context where an arbitration panel is called on to interpret the employment relationship").

The genesis of the principle applied in those cases was in the context of arbitration provisions contained in collective bargaining agreements. *See Liang*, 653 F.2d at 312-13 (citing *Int'l Ass'n of Machinists v. Campbell Soup Co.*, 406 F.2d 1223, 1226-27 (7th Cir.), *cert. denied*, 396 U.S. 820 (1969); *Amoco Oil Co. v. Oil, Chemical & Atomic Workers Int'l Union*, 548 F.2d 1288, 1294 (7th Cir.), *cert. denied*, 431 U.S. 905 (1977)). As to such disputes, as often as not, the issue before the arbitrator is whether a discharged employee should be reinstated, and if so, on what conditions. *See, e.g., Lynchburg Foundry Co. v. United Steelworkers of Am.*, 404 F.2d 259, 261 (4th Cir. 1968) ("When an arbitrator is commis-

[15]At oral argument, counsel for the Appellants described the practice-of-law issue as a "stepping stone."

sioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies."). The propriety of applying the principle in the judicial review of arbitration awards under Rule 10101 is less than clear. In any event, in neither of the cases relied on by the Appellants was the court faced with an express agreement providing for termination at will.[16] Accordingly, whether or not we believe those cases announced a rule of general application, we decline to follow them under the circumstances of this case.

V.

As we acknowledged at the outset of this opinion, *vacatur* of an arbitration award by a federal court is rare, as it should be. We are satisfied that the district court did not err in concluding that this case presents such a rare occasion. Accordingly, the judgment of the district court is

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[16]Indeed, the Eighth Circuit's *Agron* opinion demonstrates that the case is easily distinguishable from the case before us:

> If Agron's employment was purely at-will, the arbitration procedure designed to interpret that employment relationship would serve no identifiable purpose. Accordingly, the arbitration panel had the power to determine whether the firing was justified. *PaineWebber has not shown that the arbitrators' power was expressly limited to application of the Kansas at-will doctrine by the terms of the employment agreement, promissory note, or any other factor. Rather, PaineWebber merely contends that the panel's disposition improperly disregarded Kansas law.* Accordingly, we are powerless to upset the award.

49 F.3d at 352 (emphasis added). In contrast, the agreements at issue in this case expressly provide for termination at will, i.e., on five days notice. Furthermore, in light of the availability of numerous federal and state statutory claims available even to at-will employees, *see, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and to independent contractors, *see* 42 U.S.C. § 1981, it simply is not the case that "an arbitration procedure designed to interpret [such an] employment relationship would serve no identifiable purpose."

AFFIRMED.

FILED: February 22, 2010

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1038
(3:07-cv-0028-REP)

RAYMOND JAMES FINANCIAL SERVICES, INCORPORATED,

Plaintiff - Appellee

v.

THOMAS W. BISHOP; STEVEN H. HAMANT; TIMOTHY E. SCANLON,

Defendants – Appellants

J U D G M E N T

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S.CONNOR, CLERK

FILED: March 9, 2010

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1038
(3:07-cv-00028-REP)

RAYMOND JAMES FINANCIAL SERVICES, INCORPORATED,

Plaintiff - Appellee

v.

THOMAS W. BISHOP; STEVEN H. HAMANT; TIMOTHY E. SCANLON,

Defendants - Appellants

O R D E R

The Court grants the motion for extension and extends the time for filing a petition for rehearing to March 10, 2010.

For the Court--By Direction
/s/ Patricia S. Connor, Clerk

FILED: March 26, 2010

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1038
(3:07-cv-00028-REP)

RAYMOND JAMES FINANCIAL SERVICES, INCORPORATED,

Plaintiff - Appellee

v.

THOMAS W. BISHOP; STEVEN H. HAMANT; TIMOTHY E. SCANLON,

Defendants - Appellants

O R D E R

The Court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Duncan and Judge Davis.

For the Court—By Direction
/s/ Patricia S. Connor, Clerk

FILED: April 5, 2010

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1038
(3:07-cv-00028-REP)

RAYMOND JAMES FINANCIAL SERVICES, INCORPORATED,

Plaintiff – Appellee

v.

THOMAS W. BISHOP; STEVEN H. HAMANT; TIMOTHY E. SCANLON,

Defendants - Appellants

M A N D A T E

The judgment of this Court, entered February 22, 2010, takes effect today.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

RAYMOND JAMES FINANCIAL SERVICES, INC.,
Plaintiff

Civil Action No.: 3:07CV028

v.

THOMAS W, BISHOP,
STEVEN H. HAMANT, and
TIMOTHY E. SCANLON,
Defendants

MOTION TO VACATE

Pursuant to Rule 7 of the Federal Rules of civil Procedure and the Federal Arbitration Act, 9 USC § 10, the Plaintiff, Raymond James Financial Services, Inc. ("RJFS"), by and through its undersigned counsel, hereby moves to vacate an arbitration award entered in favor of the Defendants and in support thereof states as follows:

PARTIES

1. RJFS is a Florida corporation headquartered in St Petersburg, Florida. RJFS is a full-service broker dealer and a member of the National Association of Securities Dealers ("NASD"). RJFS is a citizen of Florida pursuant to 28 USC § 1332(c)(1).

2. The Defendants were independent contractors with RJFS from approximately April 2001 through June 2004, working out of an office in Richmond, Virginia located at 10010 Three Chopt Road, Richmond, VA 23233. Thomas W. Bishop resides at 9400 Sir Barry Drive, Richmond, VA 23229. Steven

H. Hamant resides at 11321 Sadler Oaks Drive, Glen Allen, VA 23060. Timothy E. Scanlon resides at 1405 Forest Avenue, Richmond, VA 23229.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to, among other things, 28 USC § 1332(a), because there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs. Jurisdiction is also proper under 9 USC § 10. Venue is proper under 28 USC §1391(a), because, among other things, the Defendants reside in this district and the arbitration took place in the City of Richmond.

FACTUAL ALLEGATIONS

4. Each of the Defendants herein was hired as an independent contractor by the Plaintiff, and each Defendant entered into an agreement with the Plaintiff governing his relationship with the Plaintiff. Copies of those agreements are attached hereto as Exhibits 1, 2 and 3 and are incorporated herein by reference,

5. All of the agreements provide in Paragraph 3 that "Either party may terminate this agreement by providing the other party no less than five (5) business days prior written notice of their intent to terminate this agreement" Because the Plaintiff had decided that it no longer wanted to do business with the Defendants, it provided five days written notice of its intention to terminate on April 27, 2004. This date was extended, and the Defendants were ultimately terminated on June 25, 2004.

6. The Plaintiff and the Defendants are required by the Rules of NASD Dispute Resolution to arbitrate all disputes. Sometime in August 2005, the

Defendants filed a Statement of Claims. A copy of that Statement of Claims, together with the Plaintiffs Answer, Affirmative Defenses, and Counterclaims are attached hereto as Exhibit 4 and 5 respectively and incorporated herein by reference. A copy of the NASD Arbitration Uniform Submission Agreement is attached hereto as Exhibit 6 and incorporated herein by reference.

7. After an extended hearing, the three member arbitration panel rendered its decision on December 12, 2006. A copy of that decision is attached hereto as Exhibit 7 and incorporated herein by reference.

8. Despite the fact that the Defendants' contracts with the Plaintiff specifically permitted the Plaintiff to terminate them without cause, as was done, the arbitration panel awarded each of the Defendants damages for wrongful termination. The only proof of damage that any of the Defendants presented during the course of the arbitration was contained in their damage exhibits and their testimony in connection therewith. Copies of those exhibits are attached hereto as Exhibits 8, 9 and 10.

9. Pursuant to 9 USC § 10(a)(4), these awards should be vacated, because the arbitrators exceeded their powers in awarding damages for wrongful termination, when the parties' agreement unequivocally provided for termination without cause.

WHEREFORE, the Plaintiff moves for an Order vacating the award to the Defendants; for its fees and costs incurred herein; and for such other and further relief as to the Court may seem proper

Dated: January 12, 2007

Respectfully submitted,
/s/
Stephen G. Cochran (Va Bar No.12956)
Womble Carlyle Sandridge & Rice, PLLC
8065 Leesburg Pike, Fourth Floor
Tysons Corner, VA 22182
703-790-3310 (phone)
703-918-2243 (fax)
Counsel for Raymond James Financial Services, Inc.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

RAYMOND JAMES FINANCIAL
SERVICES, INC.,

Plaintiff

v.

Case No.: 3:07CV028
Hon. Robert E. Payne

THOMAS W. BISHOP, STEVEN H. HAMANT, and
TIMOTHY E. SCANLON,

Defendants

AMENDED MOTION TO VACATE

Pursuant to Rule 7 of the Federal Rules of civil Procedure and the Federal Arbitration Act, 9 USC § 10, the Plaintiff, Raymond James Financial Services, Inc. ("RJFS"), by and through its undersigned counsel, hereby moves to vacate an arbitration award entered in favor of the Defendants and in support thereof states as follows:

PARTIES

1. RJFS is a Florida corporation headquartered in St Petersburg, Florida. RJFS is a full-service broker dealer and a member Of the National Association of Securities Dealers ("NASD"). RJFS is a citizen of Florida pursuant to 28USC § 1332(c)(1).

2. The Defendants were independent contractors with RJFS from approximately April 2001 through June 2004, working out of an office in Richmond, Virginia located at 10010 Three Chopt Road, Richmond, VA 23233. Thomas W. Bishop resides at 9400 Sir Barry Drive, Richmond, VA 23229. Steven

H. Hamant resides at 11321 Sadler Oaks Drive, Glen Allen, VA 23060, Timothy E. Scanlon resides at 1405 Forest Avenue, Richmond, VA 23229.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to, among other things, 28 USC § 1332(a), because there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs. Jurisdiction is also proper under 9 USC § 10. Venue is proper under 28 USC § 1391(a), because, among other things, the Defendants reside in this district and the arbitration took place in the City of Richmond.

FACTUAL ALLEGATIONS

4. Each of the Defendants herein was hired as an independent contractor by the Plaintiff and each Defendant entered into an agreement with the Plaintiff governing his relationship with the Plaintiff. Copies of those agreements are attached hereto as Exhibits 1, 2 and 3 and are incorporated herein by reference.

5. All of the agreements provide in Paragraph 3 that "Either party may terminate this agreement by providing the other party no less than five (5) business day's prior written notice of their intent to terminate this agreement." Because the Plaintiff had decided that it no longer wanted to do business with the Defendants, it provided five days written notice of its intention to terminate on April 27,2004. This date was extended, and the Defendants were ultimately terminated on June 25, 2004.

6. The Plaintiff and the Defendants are required by the Rules of NASD Dispute Resolution to arbitrate all disputes. Sometime in August 2005, the

Defendants filed a Statement of Claims. A copy of. that Statement .of Claims, together with the Plaintiff's Answer, Affirmative Defenses, and Counterclaims are attached hereto as Exhibit 4 and 5 respectively and incorporated herein by reference. A copy of the NASD Arbitration Uniform Submission Agreement is attached hereto as Exhibit 6 and incorporated herein by reference.

7. After an extended hearing, the three member arbitration panel rendered its decision on December 12, 2006. A copy of that decision is. attached hereto as Exhibit 7 and incorporated herein by reference.

8. Despite the fact that the Defendants' contracts with the Plaintiff specifically permitted the Plaintiff to terminate them without cause, as was done, the arbitration panel awarded each of the Defendants damages for wrongful termination. The only proof of damage that any of the Defendants presented during the course of the arbitration was contained in their damage exhibits and their testimony in connection therewith. Copies of those exhibits are attached hereto as Exhibits 8, 9 and 10.

9. Pursuant to 9 USC § 10(a)(4), these awards should be vacated, because the arbitrators exceeded their powers in awarding damages for wrongful termination, when the parties' agreement unequivocally provided for termination without cause.

10. The awards should also be vacated on the grounds that they are in manifest disregard of the law.

WHEREFORE, the Plaintiff moves for an Order vacating the award to the Defendants; for its fees and costs incurred herein; and for such other and farther relief as to the Court may seem proper.

Dated: January 17, 2007

Respectfully submitted,
/S/
Stephen G. Cochran.(Va, Bar No12956)
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703-790-3310 (phone)
703-918-2243 (fax)
Counsel for Raymond James Financial Services, Inc.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

RAYMOND JAMES FINANCIAL SERVICES, INC.,
Plaintiff,

v. CaseNo.3:07CV028

THOMAS W. BISHOP, STEVEN E. HAMANT, and
TIMOTHY E. SCANLON,

Defendants.

RENEWED MOTION TO VACATE

Pursuant to Rule 7 of the Federal Rules of Civil Procedure and the Federal Arbitration Act, 9 USC § 10, the Plaintiff Raymond James Financial Services, Inc. ("RJFS"), by and through its undersigned counsel, hereby renews its Motion to Vacate the arbitration award entered in favor of the Defendants and in support thereof states as follows:

1. On January 18, 2007, the Plaintiff filed an Amended Motion to Vacate with this Court a copy of which is attached hereto as **Exhibit 1** and incorporated herein by reference.
2. After extensive briefing and oral argument, the Court denied the Amended Motion to Vacate without prejudice and remanded this matter to the arbitrators "for a clarification of the basis upon which the award of compensatory damages was made to each of

the Claimants." Order of December 18, 2007.

3. The Defendants appealed the Court's decision to the Fourth Circuit Court of Appeals and the arbitrators chose not to act, pending the outcome of the Defendants' appeal. On April 2,2008, the Fourth Circuit granted the Plaintiff's Motion to Dismiss. A copy of that decision is attached hereto as **Exhibit 2.**
4. After receiving a copy of the Fourth Circuit's decision, the arbitrators issued their decision on April 11, 2008 supposedly "clarifying" their earlier decision. A copy of that decision is attached as **Exhibit 3.**
5. Rather than clarifying "the basis upon which the award of compensatory damages was made," the arbitrators announced that "the claimants suffered losses pertaining to the issues for which the respondent provided its lawyer." Further, since the arbitrators "did not have before them the damage information" that would support any claim of harm flowing from this "cause of action," the panel has reopened the proceedings for the Defendants to submit their "calculation of damages"
6. First and foremost, the Court remanded to the panel for a clarification of the basis for its award of damages. The panel has no authority to take additional evidence on damages. Counsel for the Defendants concede as much. See Mr. Levit's April 18,2008 letter to William J. Cassidy, **Exhibit** 4.
7. Further, nowhere in the Statement of Claims (**Exhibit** 4 to the Amended Motion to Vacate) do the Defendants Scanlon and Hamant articulate any claim involving their

representation by Terrance A. Bostic, the Counsel for RJFS who represented the Defendants in earlier arbitrations. Only Defendant Bishop, makes such a claim. Thus, even assuming such a cause of action exists, the panel's "clarification" voids the award of damages to Defendants Scanlon and Hamant

8. However, no such cause of action exists. As the Court noted during oral argument, "They said you engaged in the unauthorized practice of law, and that's ridiculous" Transcript July 26, 2007 at 8. The essence of Defendant Bishop's claim, as set forth in Paragraphs 7-13 of the Statement of Claims, was that Mr. Bostic withdrew as his counsel (after discovering a serious conflict) and settled with the other party in behalf of RJFS. Of course, Mr. Bostic had the right to withdraw as long as he did so at a time when the client would not be prejudiced. Since Defendant Bishop prevailed, he suffered no damages. Therefore, there was neither a cognizable claim, nor damages had one existed. Clearly, any finding by the arbitrators of such a cause of action would constitute a manifest disregard of the law and would warrant vacatur by this Court.

WHEREFORE, the Plaintiff moves for an Order vacating with prejudice the award to the Defendants; for its fees and costs incurred herein; and for such other and further relief as to the Court may seem proper.

RAYMOND JAMES
FINANCIAL SERVICES, INC
By Counsel

/S/

Stephen G. Cochran, Esq. (VSB#12956)
Haight, Tramonte, Yeonas, Roberts & Cochran, PC
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(703) 448-4381
Fax: (703) 442-9532
scochran@htslaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing RENEWED MOTION TO VACATE sent via facsimile and mailed First Class, postage prepaid, to counsel for the defendants this 24th day of April, 2008:

Jay J. Levit, Esq.
10132 West Broad Street Glen Allen,
VA 23060
Fax: (804) 747-5576

Scott G. Crowley, Esq.
Crowley & Crowley
1800 Bayberry Court, Suite 102
Richmond, VA 23226
Fax: (804)282-5337

/S/
Stephen G. Cochran, Esq.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA RICHMOND DIVISION

RAYMOND JAMES FINANCIAL SERVICES, INC.

Plaintiff,

v.

Civil Action
No. 3:07CV00028
June 16, 2008

THOMAS W. BISHOP, et al.

Defendants,

COMPLETE TRANSCRIPT OF CONFERENCE CALL BEFORE THE HONORABLE ROBERT E. PAYNE UNITED STATES DISTRICT JUDGE

APPEARANCES: (all via telephone)

WOMBLE, CARLYLE, SANDRIDGE & RICE
Vienna, Virginia
BY: STEPHEN G. COCHRAN, ESQ.

Counsel on behalf of the Plaintiff

LAW OFFICE OF JAY J. LEVIT
Richmond, Virginia
BY: JAY J. LEVIT, ESQ.

Counsel on behalf of Defendant Thomas Bishop

CROWLEY & CROWLEY
Richmond, Virginia
BY: SCOTT G. CROWLEY, ESQ.

Counsel on behalf of the Defendant Steven Hamant

DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT

(The proceedings in this matter commenced at 10:00 a.m.)

THE COURT: Hello, Judge.

MR. COCHRAN: Hello.

MR. LEVIT: Good morning, Judge.

THE COURT: All right. This is the Raymond James Financial case. And who is here for whom?

MR. COCHRAN: Steve Cochran for Raymond James, Your, Honor.

MR. LEVIT: And Jay Levit represents Tom Bishop.

MR. CROWLEY: Scott Crowley representing defendant Timothy Scanlon and Steven Hamant.

THE COURT: All right. You were to contact me when hello. Are you there?

MR. COCHRAN: We're here.

THE COURT: All right. I don't know what happened.

You were to contact me when the arbitrators had finished whatever they were going to do, I believe, was the last order that was entered in the case. Is that what's happened? Are the arbitrators finished?

MR. LEVIT: Yes.

THE COURT: So where do we go from here?

MR. LEVIT: This is Jay Levit speaking. I think the arbitrators' award ought to be confirmed. That's where we ought to go.

THE COURT: Well, I'm talking about procedurally what has to happen.

MR. LEVIT; It seems to me that what ought to happen now is that now that you have the final response of the arbitrators', I think you're in a position to decide whether to affirm or deny the pending motion to vacate which was denied without prejudice.

THE COURT: What is going on here?

MR. COCHRAN: Judge, we just had a power failure, and I got disconnected.

THE COURT: Who is this?

MR. COCHRAN: This is Steve Cochran. I'm back on the line. We've been having power failures and power surges all morning.

THE COURT: Yeah, I've read about it.

I had asked, Mr. Cochran, where procedurally we ought to go.

Did the arbitrators issue a new opinion?

MR. COCHRAN: They did, and I sent it to your chambers. You should have it. It's a June 4, 2008 opinion.

THE COURT: But then they were going to deal with damages I thought was the next stage.

MR. COCHRAN: That's what they did in their June 4, 2008 opinion. I verified their April 11, 2008 opinion. If I might say, it doesn't clarify much, but it renews the same amount of damages. Do you not have the June 4, 2008 opinion in front of you, Judge?

THE COURT: No. What's the case number? It's not an electronic case, is it?

Judge, no, it's not. That's

MR.LEVIT: Judge, no, it's not

THE COURT: That's Okay.

MR.LEVIT: It's 3:07CV028.

THE COURT: Yeah, I think it's too early to be an electronic case.

Well, does that mean that you need to file an amended motion to set aside or confirm or whatever? You started this.

MR. COCHRAN: I need to refile my motion to vacate, Your Honor. This is Steve Cochran.

THE COURT: All right, Mr. Cochran. Then you will file a brief with that?

MR. COCHRAN: I will.

THE COURT: All right. We need to have the matter briefed in perspective of the new opinion.
MR. COCHRAN: Yes, sir.

THE COURT: Because the text of the April opinion was far different than the text of the opinion that they issued sometime ago, several years ago now.

MR. COCHRAN: Yes, sir.

THE COURT: So it's a whole new ballgame and it needs all entire new briefing.

MR. LEVIT: Judge, I'd like to just say something in that regard. It's not a whole new ballgame, and what the issue is not different from what the issue was in December of 2006. And if you look at page 17 of your opinion, it's rather clear, even to you. You make it very clear that it's rather clear what the basis of their decision is.
And the only thing they have said is that they considered a variety of factors, all of which were outlined in their original decision. They haven't changed any of those factors. They are all there.

They are all listed by the Court. They were all briefed by the parties. There isn't anything here that's new.

THE COURT: Mr. Crowley, what do you say?

MR. CROWLEY: I tend to agree, Judge. I think the judge rearticulated their position, but if not, it wouldn't be worse, but the substance is the same.

MR. COCHRAN: Your Honor, this is Steve Cochran. While I wouldn't say it's new, they have gone a little bit further to make it clear that the primary basis, if not the only basis, for their award was what they considered the unauthorized practice of law, which is -- it's hard to say that this clarifies anything because it's still a muddled picture, but to the extent that they are hanging their hat on that issue, I guess it does. But I do think a new round of briefing to focus on this issue is appropriate.

THE COURT: Well, Mr. Levit, excuse me, but I've got the opinions now, and this is a significantly different matter than it was when it was originally presented. So, Mr. Cochran, you file your amended motion and brief with citations to the record and to the case law as to the decision as it exists as of April 11 and June 4. And that's what you focus your briefs on because they have put out a new basis for their opinion, so that's what we'll do.

And then Mr. Levit --

MR. LEVIT: Yes.

THE COURT: -- you and Mr. Crowley each file your own responses to that. And don't you file anything in here that's a combined pleading. You're going to have to file separately because each plaintiff, each one of you-all who were seeking an award, is somewhat different, and what applies to

one won't apply necessarily to the other. And you-all also don't file a -- if you want to file your own motion, then you file your motion to confirm on the same day and a separate pleading from your response to his motion.

I'm not going to have this mishmash and commingled nonsense that was in the previous briefs and then I have to sort out what relates to what. So if you just want to oppose it, that's fine. But if you want to file a motion to confirm, you file your motion to confirm at the same time he files his amended motion to vacate.

MR. COCHRAN: Your Honor, do you want to set a briefing schedule while we're on the phone?

THE COURT: Yes, I do.

MR. COCHRAN: Might I suggest that I'll file my motion to vacate by July 18?

THE COURT: All right.

How long do you want to file your response, Mr. Levit and Mr. Crowley?

MR. LEVIT: Let me see. He's asking until July 18.

THE COURT: Today is June the 17th.

MR. LEVIT: He's asking 30 days to file an amended motion to vacate. He's already filed a motion to vacate, Judge, a second one, so this will be a third one. And he needs 30 days to do that. He's filed a second one, and he also sent it to the arbitrators.

So I didn't send them anything like that. He sent his -- he called it an amended motion to vacate. He filed it. You said it was premature in the last telephone conference, and that we didn't have to file an answer to it. But that's on file, and now he's going to file a third motion to vacate.

I mean, maybe it will be a fourth or a fifth, I don't know.

THE COURT: I'll tell you what, Mr. Levit. You're either going to do it the way that I've asked you to do it or I'll just summarily decide the case adversely to you because whether you like it or not, if you read the April 11th and the June 4th, it's a different matter and a different basis of decision than it was when the first decision came up here. It, therefore, calls for briefing on different issues with different authorities on different matters.

And if you choose to go on and treat it like it's the old case, then you can do that if you'd like to, but you might as well tell your clients that what you're filing is something that is contrary to what appears on the face of the pleadings. Now, enough's enough.

How much time do you want to file your rely? And your reply is going to have to be, if you're going to do the job for you clients, tailored to meet what he says. Now, how much time do you want?

MR. LEVIT: Well, I don't know. I'll see how Mr. Crowley feels about it.

THE COURT: Mr. Crowley, how much time do you want?

MR. CROWLEY: Judge, what if I ask for August 8?

THE COURT: August 8 is fine if that's what you want to do.

MR. LEVIT: Well, that's what I'll go with.

THE COURT: All right. Then you file August 8, too.

And I suppose that your position is that you want the award confirmed; is that right, Mr. Crowley?

MR. CROWLEY: Yes, sir.

THE COURT: If you want the award confirmed, you can separately file on that date a motion to confirm with all the papers that you want to file with it.

MR. CROWLEY: Judge, to clarify, so if I filed a motion to confirm, it will be on the same date as my response is due on August 8?

THE COURT: That is correct, on the same date as your response is due. And so, Mr. Levit, is yours. But they are separate papers. I don't want them one commingled with the other. So they'll be entirely separate documents.

Now, Mr. Cochran, when do you want to file your reply? And you need to file your reply brief on your motion and separately a response brief to any motion to confirm that they file. And it may be that all you do is say that "I rely on the brief that I filed." I don't know how you're going to handle it, but anyway, you're going to have to file them all, and file your reply brief to their response to your motion, and then you're going to have to file also the response to their motion.

So how much time do you want?

MR. COCHRAN: Two weeks, Your Honor.

THE COURT: All right. That would be August the 22nd.

MR. LEVIT: Is that a weekday?

THE COURT: That's a Friday. That's two weeks after August the 8th.

Then one week after that, which is the 29th of August, Mr. Crowley, you and Mr. Levit can file any reply that you have to his response to your motion to confirm.

MR. COCHRAN: By which date, Judge?

THE COURT: The 29th of August.

MR. COCHRAN: The 29th? Okay

THE COURT: Now, do we need oral argument?

By the way, gentlemen, you need to put together, make sure you're in agreement on what the record is here, and make sure we have a good record and that your citations are to the record pages and the record exhibits.

Mr. Cochran, I'm going to leave it to you to take the lead in assuring that there's a good and complete record here for us to work with.

MR. COCHRAN: I will do that, Your Honor.

THE COURT: And they will cooperate with you, but it's your responsibility to get it, get it organized, labeled, tabbed in a notebook, etc. All right?

MR. COCHRAN: I will do it, sir.

THE COURT: Is there anything else we need to do? Does anybody want oral argument?

MR. COCHRAN: Your Honor, I think you have heard enough from us.

THE COURT: All right. Then I'll decide it on the papers if everybody is in agreement.

All right. Is there anything else that needs to be done?

MR. COCHRAN: No, sir.

THE COURT: All right.

MR. LEVIT: Judge, are you going to issue an order on this schedule?

THE COURT: Yes. Yes, there will be. Anything else?

MR. COCHRAN: That's all, Your Honor.

THE COURT: All right. Thank you all very much.

MR. CROWLEY: Judge, Scott Crowley.

THE COURT: Yes, Mr. Crowley.

MR. CROWLEY: Probably the three lawyers, as adults, can sort it out. I'm anticipating some problems as to what is the record. I know that following the closing of the record before the arbitration panel Mr. Cochran submitted some affidavits, which I believe are outside of the record.

THE COURT: Well, did the panel consider them?

MR. CROWLEY: No, they were submitted to this court as part of the original motion to vacate.

When you're talking about the record, Judge, there was five plus days of hearing that have never been transcribed. I'm not proposing that they be transcribed, but there's confusion in my mind as to what the hearing constitutes.

THE COURT: There's not any confusion in anybody's mind what the hearing constitutes. The hearing constitutes whatever was before the arbitrators.

MR. CROWLEY: I mean, what the record --

THE COURT: Well, that's the record. If he wants to submit something in further support of his motion, he can do that and identify it as something dehorns the record, and if you want to object to considering it, you'll have to do that, and we'll have to wait and see.

MR. CROWLEY: Okay. I understand.

THE COURT: But you-all know what the record before the arbitrators was. All right.

MR. COCHRAN: Thank you, Judge.

THE COURT: All right. Thank you. Bye.

(The proceedings were adjourned at 10:20 a.m.)

EXHIBIT 3

IN ARBITRATION PROCEEDINGS BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

THOMAS W. BISHOP,
STEVEN E. HAMANT, and
TIMOTHY E. SCANLON
v.

RAYMOND JAMES FINANCIAL SERVICES, INC.,

STATEMENT OF CLAIMS

Claimants Thomas W. Bishop ("Bishop"), Steven E. Hamant ("Hamant"), and Timothy E. Scanlon ("Scanlon"), by counsel, for their statement of claims set forth as follows:

Relevant Facts

1. Prior to April 2001, Claimants were Financial Advisors with the office of Josephthal & Co. ("Josephthal") in Richmond, VA. Early in 2001 Raymond James Financial Services, Inc. ("Raymond James") had discussions with claimant Bishop, in which Raymond James proposed that he open a franchised branch office of Raymond James in Richmond, VA, and serve as its Branch Manager. Bishop accepted the proposal and opened this branch office in Richmond, VA for Raymond James in April 2001. Among others joining this branch office as Raymond James Financial Associates were claimants Hamant and Scanlon.

2. Claimants Bishop, Hamant and Scanlon previously had been successfully working in the Josephthal office as Financial Advisors earning good incomes.. They were induced by Raymond James to terminate their professional relationships as Financial Advisors with Josephthal, and to assume their new respective professional roles as Branch Manager and Financial Advisors, respectively, with Raymond James in its newly-created franchised Richmond office.
3. Raymond James so induced the three claimants by representing to and promising them that (1) if they were successful in managing the new Richmond office profitably for Raymond James, then the claimants would each have security in their positions with Raymond James; (2) each claimant would be rewarded by Raymond James with substantial compensation for their successful efforts in making the new office profitable; and (3) the new franchised branch office would itself be secure. Claimants relied upon these representations to their detriment, as Raymond James intended Cf. *Twohy v. Harris, 72 S..E..2d 329 (Va., 1952); Dulaney Foods, Inc..v. Ayers, 260 S.E. 2d 196 (Va. 1979).*
4. Thereafter, claimants successfully operated the new Raymond James branch office. They made it quite profitable. Claimants were favorably recognized by Raymond James for their Success and the success of the new branch office,

5. (a) The claimants' success became apparent to an aspiring competitor of Raymond James, National Securities Corporation ("National Securities"), Whose Branch Manager was Gary M. Stewart ("Stewart"). Thomas D. Ellen ("Ellen") and Alexander M. Shapiro ("Shapiro") served as Financial Advisors under Stewart for National Securities. (b) In order to take market share from the new and successful Raymond James branch office, Stewart, Ellen and Shapiro on National Securities' letterhead, with the knowledge, approval, and ratification of National Securities, wrote defamatory and derogatory letters directly to Raymond James falsely accusing Bishop of unlawful, unethical, and unprofessional conduct in his capacity as Branch Manager for the new Raymond James branch office in Richmond.
6. Raymond James investigated the matter, and found no wrongdoing on Bishop. Nevertheless, Stewart, as Branch Manager for National Securities, filed NASD against Bishop and Raymond James, reiterating Stewart's false accusation against Bishop, and naming Raymond James as a defendant because Bishop was Branch Manager of Raymond James targeted new branch office in Richmond.
7. Terrance A. Bostic, Esquire ("Bostic"), who was Raymond James' authorized Vice President and Associate Corporate Counsel, contacted Bishop, and told him that Raymond James had full confidence in Bishop. Bostic assured Bishop that Raymond James would

not only defend itself, but would also defend Bishop against the unfounded claims filed with the NASD by Stewart against Bishop and Raymond James.

8. However, Bostic (Raymond James' Vice President and Staff Corporate Counsel and Raymond James did not intend to fully defend Bishop. It was unknown to Bishop that they planned to extricate Raymond James from Stewart's claims pending before the NASD by effecting a settlement with Stewart, excluding Bishop. In return, Raymond James would be released by Stewart (National Securities' Branch Manager), Raymond James would withdraw its representation and defense of Bishop, and would close Raymond James' new Richmond branch office.
9. To this end, shortly before or after reaching its settlement with Stewart, Terrance A. Bostic, Esquire, Vice President and Associate Corporate Counsel for Raymond James, notified Bishop by letter dated December 1,2004 that Raymond James would no longer represent Bishop or defend him from Stewart's claims pending before the NASD. Bostic did not tell Bishop of Raymond James' settlement plans with Stewart (Branch Manager for National Securities) excluding Bishop. Bostic knew Bishop believed Bostic was representing him as well as Raymond James, because this is what Bostic had previously told Bishop. Bishop relied upon this to his detriment.
10. (a) Shortly after Stewart had filed his claims with NASD against Bishop and Raymond

James, and following on the heels of Bostic's misrepresentation to Bishop that he would be defended by Raymond James, Raymond James notified the claimants that it was terminating its relationship with them, and closing its successfully operated new Richmond franchised branch office. Bostic, however, on behalf of and as authorized by Raymond James misrepresented to the claimants that Raymond James would continue its defense of Bishop from Stewart's claims.

(b) Initially, Raymond James falsely told claimants it was closing the new Richmond branch office because of customer complaints, but there were no complaints. Then Raymond James changed its story and falsely told claimants that its closing action was because claimants did not get along, notwithstanding their demonstrated success in working together at the new branch office.

11. At the time Bostic and Raymond James continued to falsely assure Bishop that they would defend him from Stewart's claims, Bostic and Raymond James knew that they would- drop representation of Bishop when Raymond James reached a settlement for itself with Stewart Cf. *Sea-Land Service v. O'Neal, 297 S.E.2d 647 (Va. 1982); Elliott v. Shore Stop, Inc., 384 S.E.2d 752 (Va. 1989).* This was a serious breach of Bostic's fiduciary and legal duties owing from him and Raymond James to Bishop. Bostic knew there was a conflict of interest between Bishop and Raymond James, but did not tell Bishop this

as he was duty-bound to do as corporate counsel for Raymond James.

12. On or about December 1, 2004, Raymond James reached its own settlement with Stewart, or it became apparent to Raymond James on or about that date that settlement for itself was imminent. Accordingly, Bostic wrote his December 1, 2004 letter to Bishop admitting that Raymond James no longer represented Bishop. Raymond James and Bostic abandoned Bishop mid-stream, to his detriment and damage.

13. The stated misrepresentations made by Bostic on behalf of Raymond James with the knowledge, authorization, approval, and ratification of Raymond James were in flagrant violation of basic just and equitable principles of trade in the securities industry, as well as Bostic's fiduciary and legal duties owing from him and Raymond James to Bishop.

CLAIMS (14-17.)

14. (a) As a result of these flagrant violations of just and equitable principles of trade by Raymond James through its authorized representative and staff legal counsel, Terrance Bostic, each of the claimants has been damaged in his professional career, and each has sustained loss of compensation that each claimant would have earned in the heretofore successful and profitable operation of the former new franchised branch office of Raymond James in Richmond, VA.
(b) Each of the claimants had been induced by Raymond James to leave good positions with

Josephthal in order to open the new Raymond James branch office in Richmond, VA. Raymond James induced each claimant to his detriment to change his position and leave Josephthal for Raymond James. Raymond James did this by promising the claimants that if they successfully and profitably operated the new Raymond James branch office, their positions and careers with Raymond James would be secure. without just cause Raymond James knowingly and wantonly breached its promises and inducements to the damage of each claimant as stated.

15.(a) By its stated deceit and misconduct, Raymond James (1) acted in contravention of just and equitable principles of trade; (2) interfered with and unlawfully terminated each of the claimants prospective economic advantages arising from their successful operation of the new Raymond James branch office; (3) interfered with the performance of its contractual promises and inducements to each of the claimants; and (4) tortuously and deceitfully terminated the claimants legitimate and high business expectations that their positions with Raymond James were secure, and that the new and successful Raymond James branch office in Richmond was secure. Cf. *Chaves v. Johnson, 335 s.e.2d 97,102 (va. 1985); Maximus, inc. v. lockheed info mgmt. sys. co., 493 s.e.2d 375 (va. 1997); commerce funding corp. v. worldwide sea ser. Corp,* 249 f.3d 204,213 (4thcir. 2001). (b) this misconduct of Raymond James is also

violative of **statutory** Virginia public policy set forth in the **Retail Franchising Act requiring fair dealing**, Virginia Code § 13.1-558, as implemented by Virginia Code § 13.1-563 **(prohibiting misrepresentation and deceit);** § 13.1-564 **(requiring reasonable cause for franchise cancellation);** and § 13.1-571(d) **(providing legal and equitable remedies).**

16. In secretly excluding Bishop and reaching settlement with Stewart, and abandoning representation and defense of Bishop, corporate counsel Bostic and Raymond James engaged in **common law and statutory conspiracy** with Stewart, the Branch Manager of National Securities, a come-lately aspiring competitor of Raymond James in Richmond. Cf. Virginia Code §§ 18.2-499,500; *Elliott v. Shore Stop, Inc.,* 384 S.E.2d 752 (Va. 1989). Raymond James and Bostic threw in the towel at Bishop's expense for the purpose of extricating Raymond James from Stewart's claims pending before the NASD. Raymond James and corporate counsel Bostic did so secretly with Stewart and National Securities **at the expense and to the detriment and damage of each claimant as stated**.

17. This tortious and deceptive misconduct by Raymond James and its corporate counsel Bostic was contrary to Raymond James internal policies and procedures; was wilful and wanton, in reckless disregard of the welfare and rights of each claimant; and was in flagrant and reckless violation of just and equitable principles of trade making awards of

punitive damages appropriate.

WHEREFORE, each claimant prays that this Panel enter judgment in his favor against Raymond James, and award each claimant as follows:

THOMAS W. BISHOP

(a) compensatory damages of $1,500,000;
(b) punitive damages in the amount of $250,000;
(c) attorney fees, costs, expenses, fees and assessments incurred in this matter; and
(d) such additional legal and equitable relief as the Panel may deem appropriate.

STEVEN E. HAMANT

(a) compensatory damages of $750,000;
(b) punitive damages in the amount of $50,000;
(c) attorney fees, costs, expenses, fees and assessments incurred in this matter; and
(d) such additional legal and equitable relief as the Panel may deem appropriate.

TIMOTHY E. SCANLON

(a) compensatory damages of $750,000;
(b) punitive damages in the amount of $50,000;
(c) attorney fees, costs, expenses, fees and assessments incurred in this matter; and
(d) such additional legal and equitable relief as the Panel may deem appropriate.

Respectfully Submitted

THOMAS W. BISHOP, STEVEN E. HAMANT, and TIMOTHY E. SCANLON, *Claimants*

By _____/S/_____
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EXHIBIT 4

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October 28, 2005

Director of Arbitration
NASD Dispute Resolution
1735 K Street, NW
Washington, DC 20006-1506

Re; Thomas W. Bishop, Steven E. Hamant, and Timothy Scanlon v. Raymond James Financial ervices, Inc., NASD Dispute Resolution Case No. 05-04391

Answer. Affirmative Defenses, and Counterclaims

Dear Sir or Madam:

Please accept this correspondence on behalf of Raymond James Financial Services, Inc. ("RJFS") as its Answer, Affirmative Defenses, and Counterclaims to the Statement of Claims filed by Thomas W. Bishop ("Bishop"), Steven E. Hamant ("Hamant"), and Timothy E. Scanlon ("Scanlon"). As set forth more fully below, Respondent generally and specifically denies each and every allegation of wrongdoing and further denies liability to the

Claimants for damages in any amount under any of the theories raised in the Statement of Claims. Respondent submits its counterclaims against Bishop, Hamant, and Scanlon for breach of contract and against Bishop for violation of the Virginia Computer Crimes Act.

INTRODUCTION

Raymond James Financial, Inc. ("Raymond James"), which is headquartered in St. Petersburg, Florida, and listed on the New York Stock Exchange, is a diversified financial Services holding company whose subsidiaries engage primarily in investment and financial planning, RJFS is a wholly-owned subsidiary of Raymond James, is a full service broker/dealer, and a member of the National Association of Securities Dealers. RJFS is a network of over 3,500 independent contractor financial advisors in over 1,550 offices located throughout the United States. From approximately April 2001 through April 2004, Bishop was an independent contractor with, and a branch manager and co-manager of, an RJFS office in Richmond, Virginia. During that same time period, Hamant and Scanlon were independent contractors affiliated with RJFS's Richmond office as Financial Advisors.

Bishop seeks to recover compensatory damages in the amount of $1,500,000.00, punitive damages in the amount of $250,000.00, attorney's fees, and arbitration costs. Hamant and Scanlon seek to recover compensatory damages in the amount of $750,000.00 each, punitive damages in the amount of $50,000.00 each, attorney's fees, and arbitration costs. As Respondent understands the vague Statement of Claims, Claimants' theories of recovery include fraudulent inducement, promissory

estoppel, tortious interference, wrongful discharge, violation of the Retail Franchising Act, breach of fiduciary duty, common law and statutory conspiracy, and violation of just and equitable principles of trade. The Claimants in this case, like all other claimants, have the burden of proof with respect to each of their allegations and each theory of recovery. For the reasons set forth herein, Claimants cannot meet their burden of providing sufficient facts or the requisite legal basis to entitle them to an award of damages under any theory of recovery.

The Statement of Claims is replete with false allegations, vague factual allegations, and unsupported legal conclusions. Claimants have taken selected, random, and, in most instances, untrue facts and presented a distorted picture in an effort to create a cause of action giving rise to liability against the Respondent where none exists in law or fact. A review of all relevant facts in this case will establish that all claims are lacking in substance and without merit. For these reasons, and the additional reasons discussed herein, this meritless Statement of Claims should be dismissed and Respondent should be awarded its costs of defense, including all forum fees.

RELEVANT FACTS

The Statement of Claims, as Respondent understands it, rests upon the following allegations. First, RJFS fraudulently induced the Claimants to terminate their relationship with Josephthal & Co. ("Josephthal") and to join the Richmond, Virginia branch office of RJFS. Second, RJFS wrongfully terminated Claimants. Third, RJFS and Terrance Bostic engaged in a common law and statutory

conspiracy with Stewart in reaching a settlement in the Stewart arbitration. Fourth, RJFS's withdrawal of legal representation of Bishop in the Stewart arbitration constituted a breach of fiduciary duty owed by RJFS to Bishop. As fully set forth below, all of the above allegations are false.

A. Claimants' Prior Affiliation with Josephthal

Prior to April 2001, Claimants Bishop, Hamant, and Scanlon, along with Thomas Ellen ("Ellen"), Alex Shapiro ("Shapiro"), Steve Taton ("Taton"), and others, were Financial Advisors affiliated with the Richmond office of Josephthal & Co. In mid to late 2000, Josephthal replaced the branch manager, Gary Stewart ("Stewart"), with Paul Risberg. Shortly thereafter, Stewart and those associated with him left Josephthal to open a First Union Securities office. Claimants, Shapiro, and Ellen declined Stewart's invitation to join First Union Securities, as they had already approached RJFS and had begun negotiations to open a RJFS branch office in Richmond.

B. Claimants' Affiliation With RJFS

On March 8, 2001, Claimants each entered into a Financial Advisor ("FA") Agreement with RJFS, thereby accepting a position as independent contractors associated with Bishop.
(Exhibits A-C). Claimants voluntarily resigned from Josephthal and joined a Richmond office of RJFS ("Branch 67H") on April 20, 2001.

Bishop, who was appointed branch manager, entered into an Independent Sales Associate ("ISA") Agreement with RJFS. The ISA Agreement provided in relevant part:

Termination of Agreement. Either party may terminate this Agreement by providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement. Given the unique transactional nature of the securities business, there is no need for a liquidated damages provision with respect to this agreement should either party voluntarily terminate the Agreement as neither party would be significantly damaged by such termination. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement immediately for cause in the event of a material breach of the Agreement, including but not limited to a failure to comply with any applicable law, either federal or state, or any rule or regulation, or interpretation of the Regulatory Authorities or policy of RJFS.

* * *

Indemnification.

(a) Associate indemnifies RJFS ... from and against:

(1) all liabilities of any nature of Associate [Bishop], Sub-Associates[1], or their employees, agents, customers or others whether accrued, absolute, contingent, or otherwise existing as of the date of this Agreement;

---

[1]Both Hamant and Scanlon are "Sub-Associates," as they were retained by Bishop as Financial Advisors. See ISA Agreement § l(k) (Exhibit D) (defining "sub-associate" as "persons retained by the Associate, including but not limited to any FA").

(2) all liabilities and costs arising out of the conduct of Associate's business activity, including, but not limited to any action, inaction, misrepresentation, omission, conduct, misconduct, unsecured debit, failure to supervise, violation of the terms of this Agreement, RJF policy, or any law, federal or state, any rule, regulation or interpretation of the Regulatory Authorities, or otherwise, by Associate, Sub-Associates, or their employees, agents, clients or others.

* * *

(e) All liabilities set forth shall include settlements, judgments, awards, interest, costs, reasonable attorney's fees (both internal and external) whether incurred at arbitration, bankruptcy, or-at the administrative, trial, appellate or post judgment level.

(July 13, 2001 ISA Agreement §§ 3, 20) (Exhibit D). The Claimants' FA Agreements contain virtually identical termination and indemnification provisions. (FA Agreements §§ 3, 15) (Exhibits A-C).

C. Events Leading Up to the Termination

The Claimants were the subject of a number of complaints by competitors, including, but not limited to, the following:

(1) On March 7, 2003, Stewart, the branch manager of National Securities, sent a letter to Raymond James, complaining that Bishop had disclosed information contained in Stewart's CRD and disciplinary history to Stewart's customers, parked securities, shared in the profits in customer accounts, and forged

variable annuity contracts with elderly clients. (Exhibit E).

(2) On March 28, 2003, Taton, a former Josephthal broker who had joined National Securities, filed an arbitration claim against RJFS, Scanlon, and Hamant for defamation, tortious interference, conspiracy, and securities rules violations (NASD Case No. 03-04051). (Exhibit F). After a hearing, the Panel dismissed Taton's claim against Scanlon but found RJFS and Hamant liable for defamation. (Exhibit G). As a result of this arbitration, RJFS paid a $10,000 judgment and incurred attorneys' fees and costs in the amount of $49,935.40.

(3) On July 18, 2003, Shapiro, who left RJFS to join National Securities, sent a letter to Raymond James accusing Bishop of embezzling money from Virginia Financial Associates, parking securities, and other misconduct. (Exhibit H).

(4) On August 20, 2003, Shapiro and Eilen, who had also left RJFS to join National Securities, notified Raymond James of their intention to file felony, fraud, and embezzlement charges against Bishop. (Exhibit I).

(5) In 2004, Stewart filed an arbitration claim against Bishop and RJFS (NASD Case No. 04-02340) alleging libel and tortious interference. (Exhibit J). As a result of this arbitration, RJFS paid $20,000 to settle claims and incurred attorneys' fees and costs in the amount of $8,426.42.

Members of Branch 67H, Ellen and Shapiro, were also the subject of two customer complaints. In addition to these external complaints, Branch 67H experienced a great deal of internal turmoil requiring an unusual amount of involvement of RJFS management and the need for the appointment of a co-branch manager, Michael Finnie ("Finnie").

D. Termination

On April 27, 2004, RJFS provided 5-days written notice of its intention to terminate co-branch managers Bishop and Finnie's registration with RJFS, which would effectively close Branch 67H. Although RJFS exercised its right to terminate without cause pursuant to section 3 of the ISA Agreement, the notice provided that termination "was directed by Senior Management with RJFS after careful consideration largely due to the series of complaints which have occurred in your office." (Apr. 27, 2004 Whitley email to Finnie et al.) (Exhibit K).

RJFS subsequently agreed to give Claimants and Finnie thirty days to find another broker/dealer or to consider affiliating with another RJFS branch and subsequently agreed to another extension of time to affiliate with another branch. Finnie decided to affiliate with another RJFS branch, but the Claimants voluntarily resigned from RJFS on or about June 25, 2004 to join a new broker/dealer, LPL. (Exhibit L).

E. RJFS's Withdrawal of Representation of Bishop

Bishop retained the RJFS Legal Department to represent him in his individual capacity in the Stewart arbitration proceeding, which was filed before June 2004. Terrance Bostic ("Bostic"), RJFS Vice President and Associate Corporate Counsel, continued to represent Bishop even after Bishop's voluntary resignation from RJFS on or about June 25, 2004. Upon learning of the following incident, however, Bostic immediately withdrew as Bishop's counsel.

On November 30, 2004, Finnie, who had transferred from Branch 67H to another RJFS branch, received an automated email message that his password had been changed. Finnie notified RJFS management that he had not changed his password. Based on an internal investigation, RJFS management concluded that Bishop or one of his colleagues entered RJFS's computer systems without authorization, changed Finnie's password, and gained access to computer records and blotter information. RJFS then notified the FBI of this incident.

The next day, on December 1, 2004, Bostic withdrew as counsel for Bishop due to the conflict of interest created when RJFS discovered Bishop's unauthorized access to its computer system and considered taking action against him. Given the confidential nature of the FBI and internal investigation of Bishop, Bostic did not disclose to Bishop the reason for his withdrawal.

Subsequent to the withdrawal, Bostic and Stewart's counsel entered into settlement

negotiations and reached a settlement on or about December 8, 2004. (Exhibit M).

CLAIMANTS' THEORIES OF RECOVERY

As Respondent understands the Statement of Claims, Claimants seek recovery based upon theories of fraudulent inducement, promissory estoppels, tortuous interference, wrongful discharge, violation of the Retail Franchising Act, breach of fiduciary duty, common law and statutory conspiracy, and violation of trade principles. These vague and ambiguous claims are fatally flawed and totally devoid of factual support and legal merit. In light of the circumstances described above, and the additional circumstances set forth below, the Statement of Claims, and each part thereof, is without legal or factual merit, and Respondent is entitled to a dismissal of the Statement of Claims in its entirety.

I. INDUCEMENT CLAIM

In support of their inducement claim, claimants allege that RJFS promised them job security and substantial compensation if they successfully and profitably operated the Richmond branch office; in reliance on this promise, Claimants terminated their professional relationship with Josephthal to join RJFS's Richmond office; and without just cause, RJFS breached its promise causing damage to Claimants. It is unclear whether Claimants are proceeding under the theory of fraudulent inducement, promissory estoppel, or some other cause of action. Regardless, the facts plead by Claimants are insufficient to constitute a cause of action upon which relief can be granted.

A. Fraudulent Inducement

At first blush, it appears that Claimants are proceeding under a theory of fraudulent inducement. To establish fraudulent inducement under Virginia law, however, Claimants must prove by clear and convincing evidence: "(1) a false misrepresentation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to theparty misled." *Evaluation Research Corp. v. Alequin*, 439 S.E.2d 387, 390 (Va. 1994) (holding that Alequin failed to prove that McDougal fraudulently induced him to leave his employment with Comsearch by misrepresenting the nature of employment with ERC). Claimants cannot recover under this theory as they have failed to allege a critical element—false misrepresentation by the Respondent—asserting only an allegedly unfulfilled promise. In addition, any fraud claim is barred by the two year* statute of limitations. See Va. Code Ann. § 8.01-243 ("[E]very action for damages resulting from fraud, shall be brought within two years after the cause of action accrues.").

Moreover, the "'fraud must relate to a present or pre-existing fact, and cannot ordinarily be predicated on unfulfilled promises or statements as to future events.'" *Yuzefovsky v. St. John's Wood Apartments,* 540 S.E.2d 134, 142 (Va. 2001) *(quoting Soble v. Herman,* 9 S.E.2d 459, 464 (Va. 1940)). Because RJFS's alleged promise of job security and substantial compensation related to future events, it is not a "material fact" and cannot be the basis for a fraudulent inducement claim.

B. Promissory Estoppel

An examination of the cases cited by

Claimants suggests that Claimants may be relying on a promissory estoppel or quasi-contract theory. *See Dulaney Foods, Inc. v. Ayers*, 260 S.E.2d 196, 204 (Va. 1979) (Poff, J., dissenting) (opining that the doctrine of promissory estoppel is inapplicable where employees failed to show that they suffered any detriment by relying on their employer's promise to make severance payments); *Twohy v. Harris*, 72 S.E.2d 329, 336 (Va. 1952) ("[W]here one makes a promise conditioned upon the doing of an act by another, and the latter does the act, the contract is not void for want of mutuality, and the promisor is liable though the promisee did not at the time of the promise engage to do the act; for upon the performance of the condition by the promisee, the contract becomes clothed with valid consideration which renders the promise obligatory.") (citations omitted). Yet, the Virginia Supreme Court has expressly held that "promissory estoppel is not a cognizable cause of action in the Commonwealth . . . *W.J. Schafer Assocs., Inc. v. Cordant, Inc.*, 493 S.E.2d 512, 516 (Va. 1997), *cited with approval in Nat'l Bank of Fredericksburg v. Va. Farm Bureau Fire & Cas. Ins. Co.*, 606 S.E.2d 832, 834 n.1 (Va. 2005).

In addition, "promissory estoppel is an equitable doctrine which generally is used to imply a contract where none exists," and "the doctrine would not apply here because the parties made an enforceable contract." *Tuomala v. Regent Univ.*, 477 S.E.2d 501, 506 (Va. 1996). Each of the Claimants entered into a Financial Advisor Agreement with RJFS upon accepting a position as an independent contractor, which expressly authorized RJFS to terminate without cause with five days written

notice. In addition, the Agreement provided: "This instrument and its attached initialed exhibits, if any, are the entire Agreement of the FA and RJFS ..." (FA Agreements § .22) (Exhibits A-C). This Agreement precludes Claimants from asserting reliance upon representations supposedly made to them by RJFS but not included in the agreements between the parties.

For the foregoing reasons, Respondent respectfully requests that Bishop, Hamant, and Scanlon's claim that RJFS induced them to terminate their professional relationship with . Josephthal be dismissed.

II. TORTIOUS INTERFERENCE

Based upon a review of the cases cited in paragraph 15 of the Statement of Claims, Claimants are apparently proceeding under the theory of tortious interference with contract or business expectancy. *See Commerce Funding Corp. v. Worldwide Sec. Servs. Corp.*, 249 F.3d 204, 210-15 (4th Cir. 2001) (applying Virginia law to claims for tortious interference with contractual relations and prospective economic advantage); *Maximums v. Lockheed Info. Mgmt. Sys.* Co., 493 S.E.2d 375 (Va. 1997) (tortious interference with contract expectancy); Chaves v. Johnson, 335 S.E.2d 97, 102-04 (Va. 1985) (tortious interference with contract rights). To establish tortious interference, Claimants must prove:

(i) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy

> on the part of the interferor; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted.

Chaves, 335 S.E.2d at 102. When a contract is terminable at will, it must also be proven that the defendant employed improper methods. *See Duggin v. Adams*, 360 S.E.2d 832, 836 (Va. 1987).

It is well established that a "person cannot intentionally interfere with his own contract." *Fox v, Deese,* 362 S.E.2d 699, 708 (Va. 1987); *see also Chaves,* 335 S.E.2d at 102 ("'One who intentionally and improperly interferes with the performance of a contract . . . between another and a *third person* by inducing or otherwise causing the *third person* not to perform the contract, is subject to liability [for tortious interference] . . . .'") (quoting Restatement (2d) Torts § 766 (1977)) (emphasis added). Claimants assert that RJFS interfered with the performance of its *own* contractual promises and with Claimants' business expectations related to their affiliation with RJFS. (Statement of Claims at ¶ 15(a)). Because Claimants have not alleged that RJFS interfered with a contractual relationship or business expectancy with a third person, Claimants' tortious interference claim should be dismissed for failure to state a claim upon which relief can be granted.

III. WRONGFUL DISCHARGE

Although it is not entirely clear from the

Statement of Claims, it appears that Claimants are asserting a claim for wrongful discharge against RJFS. As the Virginia Supreme Court has repeatedly explained,

> Virginia adheres to the common-law [employment-at-will] rule that when the intended duration of a contract for the rendition of services cannot be determined by fair inference by the terms of the contract, than either party is ordinarily at liberty to terminate the contract at will, upon giving the other party reasonable notice.

Lawrence Chrysler Plymouth Corp. v. Brooks, 465 SE.2d 806 (Va. 1996) (*quoting Lockhart v. Commonwealth Educ. Sys.*, 439 S.E.2d 328, 330 (1994)) (additional citations omitted). The Virginia Supreme Court has recognized an exception to the employment-at-will doctrine "limited to discharges which violate public policy, that is, the policy underlying existing laws designed to protect the property rights, personal freedoms, health, safety, or welfare of the people in general." *Miller v. SEVAMP, Inc.*, 362 S.E.2d 915, 918 (Va. 1987).

Claimants have alleged that RJFS violated the public policy set forth in the Retail Franchising Act, Va. Code Ann. § 13.1-558 et seq. Yet, as explained in the following section, this Act does not apply where, as here, no franchisor-franchisee relationship exists. Claimants cannot identify any Virginia statute establishing a public policy that RJFS has violated, and, thus, their wrongful discharge claim should be dismissed for failure to state a claim upon which relief can be granted.

Moreover, each of the Claimants entered into an agreement with RJFS, which expressly authorized RJFS to terminate without cause with five days written notice. (Exhibits A-C). On April 27, 2Q04, RJFS exercised its contractual right by providing five days written notice of its intention to terminate Bishop and Finnie's registration with RJFS, which would effectively terminate Hamant and Scanlon's affiliation with RJFS. (Exhibit K). While not required to do so, RJFS provided good cause for the termination—the series of complaints that occurred in the Richmond branch office. Furthermore, RJFS agreed to give the Claimants additional time to find another broker/dealer or to consider affiliating with another RJFS branch, and the Claimants ultimately voluntarily resigned from RJFS to join a new broker/dealer, LPL, instead of affiliating with another RJFS branch like Finnie decided to do.

IV.RETAIL FRANCHISING ACT

Claimants' allegation that RJFS has violated the Retail Franchising Act are without merit. Claimants seek relief under Va. Code Ann. § 13.1-563, which provides:

> It shall be unlawful for any person, in connection with the grant or offer to grant a franchise in this Commonwealth, directly or indirectly: (a) To employ any device, scheme or artifice to defraud; (b) To make any untrue statement of a material fact or to omit to state a material fact necessary to avoid misleading the offeree; (c) To engage in any transaction, practice or course of business

> which operates or would operate as a fraud or deceit upon the franchisee....

The Retail Franchising Act, however, "does not grant any direct right of action for violations of § 13.1-563." *Turner v. Subaru of Am., Inc.*, 566 F. Supp. 143, 151 (W.D. Va. 1983); see Va. Code Ann. § 13.1-571(a) ("Any franchisee who has declared the franchise void under § 13.1-565 or who has suffered damages by reason of any violation of § 13.1-564 may bring an action against its franchisor to recover the damages sustained by reason thereof").

Claimants also seek relief under Va. Code Ann. §13.1-564, which provides: "It shall be unlawful for a franchisor to cancel a franchise without reasonable cause or to use undue influence to induce a franchisee to surrender any right give to him by any provision contained in the franchise." A "franchise" is defined as

> a written contract or agreement between two or more persons, by which: (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services at retail under a marketing plan or system prescribed in a substantial part by a franchisor; (2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and (3) The franchisee is required to pay, directly or indirectly, a franchise fee of $500 or more.

Va. Code Ann. § 13.1-559(b).

As explicitly set forth in the agreements entered into between Claimants and RJFS, Claimants were independent contractors—not franchisees—of RJFS. Moreover, Claimants did not pay a franchise fee of $500 or more. Accordingly, there was no "franchise" as defined by the Retail Franchising Act. See Ward's Equip., Inc. v. New Holland N. Am., Inc., 493 S.E.2d 516, 521 (Va. 1997) (holding that the Retail Franchising Act was inapplicable where the dealer did not pay a franchise fee); JBG Indus., Inc. v. Simon-Telelect, Inc., 223 B.R. 901, 908 (E.D. Va. Bankr. 1997) (holding that the relationship between the parties cannot be deemed a "franchise" where, among other things, there was no evidence that a franchise fee was paid). Claimants' Retail Franchising Act claims should be dismissed for failure to state a claim upon which relief can be granted.

V. BREACH OF FIDUCIARY DUTY

To prevail on a claim for breach of fiduciary duty, Claimants must demonstrate the existence of a fiduciary relationship giving rise to a duty, breach of the fiduciary duty, and damages that were proximately caused by the breach. See Carstensen v. Chrisland Corp., 442 S.E.2d 660, 666 (Va. 1994). Bishop's claim that Bostic, RJFS Associate Corporate Counsel, breached his fiduciary duty owed to Bishop lacks factual and legal support.[2]

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[2] The Statement of Claims contains no allegation that RJFS breached any fiduciary duty owed to Hamant and Scanlon. Thus, any claim for breach of fiduciary duty brought by Hamant and Scanlon must be dismissed.

Contrary to Bishop's contentions otherwise, RJFS did not plan to withdraw from representation of Bishop and close the Richmond branch office upon reaching a settlement with Stewart. The termination, withdrawal, and "settlement were three distinct and independent events:

(1) ***Termination.*** On April 27, 2004, RJFS provided notice of its intent to terminate co-branch managers Bishop and Finnie's registration with RJFS largely due to the series of complaints which had occurred at the Richmond branch office. (Exhibit K).

(2) ***Withdrawal.*** Prior to RJFS's termination notice, Bishop retained the RJFS Legal Department to represent him in his individual capacity in the Stewart arbitration. Bostic continued to represent Bishop even after his voluntary resignation in June 2004. Immediately upon discovering Bishop's unauthorized access to RJFS's computer systems to obtain customer records and blotter information, Bostic withdrew as counsel for Bishop due to the conflict of interest on December 1, 2004. Given the confidential nature of the FBI and internal investigation of Bishop, Bostic did not disclose to Bishop that he was withdrawing because of a conflict of interest.

(3) ***Settlement.*** Subsequent to Bostic's withdrawal of representation of Bishop, Bostic and Stewart entered into settlement negotiations and reached a settlement on or about December 8,2004. (Exhibit M).

These facts establish that Bostic did not breach a fiduciary duty owed to Bishop.

Moreover, Bishop has not and cannot demonstrate that he has suffered any damages as the proximate result of the alleged breach. Bishop secured substitute counsel, McGuire Woods LLP, filed an Amended Answer, Affirmative Defenses, and Counterclaims, and still may resolve the Stewart arbitration proceeding successfully. The absence of damages precludes recovery for breach of fiduciary duty. See, e.g., Jones v. Law Firm of Hill & Ponton, 141 F. Supp. 2d 1349, 1359 (M.D. Fla. 2001) (dismissing claim for breach of fiduciary duty against former attorneys where plaintiff may still be successful in settlement negotiations or litigation). Accordingly, Bishop's claim for breach of fiduciary duty should be dismissed.

VI.COMMON LAW CONSPIRACY

Claimants' allegation that "in secretly excluding Bishop and reaching settlement with Stewart, and abandoning representation and defense of Bishop, corporate counsel Bostic and Raymond James engaged in common law and statutory conspiracy with Stewart" is without merit. "A common law conspiracy consists of two or more persons combined to accomplish, by some concerted action, some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means." *Commercial Bus. Sys., Inc. v. Bellsouth Servs., Inc.*, 453 S.E.2d 261 (Va. 1995).

Stewart had no connection whatsoever to Bostic's withdrawal of representation of Bishop.

Bostic's withdrawal was necessitated by Bishop's unauthorized access to RJFS's computer systems. Subsequent to the withdrawal, Bostic and Stewart entered into negotiations and reached a settlement. In the absence of proof of some unlawful purpose' or means, Bishop cannot prevail on its common law conspiracy claim and, thus, it should be dismissed.[3]

VII. BUSINESS CONSPIRACY STATUTE

Claimants assert that the same alleged conspiracy with Stewart also violates the Virginia business conspiracy statute, which provides: "Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever" shall be liable for civil damages. Va. Code Ann. §§ 18.2-499 to -500. This statute applies only to conspiracies resulting in business-related damages and provides no remedy for injury to one's professional reputation. *See Buschi v. Kirven*, 775 F.2d 1240, 1259 (4th Cir. 1985) (affirming dismissal of claim under the Virginia business conspiracy statute where plaintiffs claimed injury to their professional reputation rather than business-related injury).

Claimants have not and cannot demonstrate that they have suffered any damages as a result of

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3 Neither Hamant nor Scanlon were injured by the alleged conspiracy between RJFS and Stewart. Therefore, any conspiracy claim brought by Hamant and Scanlon must be dismissed.

the settlement between RJFS and Stewart. Claimants allege damage to their professional career and loss of compensation. (Statement of Claims at § 14(a)). Yet, it is implausible that RJFS's settlement with *Stewart* caused such damage given that the settlement took place nearly six months after Bishop voluntarily resigned from RJFS. Nor does the Respondent understand how the settlement had any effect whatsoever on Hamant and Scanlon, who were not parties to the Stewart arbitration. Regardless, Claimants' failure to allege business-related damages precludes them from recovering under the business conspiracy statute.

Accordingly, Claimants' statutory conspiracy claim should be dismissed for failure to state a claim upon which relief can be granted.

VIII. VIOLATION OF TRADE PRINCIPLES

Claimants assert that RJFS has violated just and equitable principles of trade in the security industry, yet they do not cite any specific principles that RJFS has allegedly violated. It is impossible to respond to such a vague assertion. Nevertheless, the evidence will establish that RJFS's actions were lawful, proper, and were not in violation of any just and equitable principles of trade in the security industry.

For the foregoing reasons, the Statement of Claim should be dismissed in its entirety and Respondent should be awarded its costs, including all forum fees.

COUNTERCLAIMS

COUNT I

(Breach of Contract Against Bishop)

1. RJFS incorporates by reference and realleges the facts set forth above.
2. Bishop's failure to reimburse RJFS for all liabilities and costs arising from RJFS's representation of Bishop in the Stewart arbitration and Bishop's sub-associates Hamant and Scanlon in the Taton arbitration constitutes a breach of section 20 of the ISA Agreement and section 15 of the FA Agreement.
3. As a direct and proximate consequence and result of Bishop's breach of the ISA and FA Agreements, RJFS has suffered damages.

COUNT II

(Breach of Contract Against Hamant)

4. RJFS incorporates by reference and realleges the facts set forth above.
5. Hamant's failure to reimburse RJFS for all liabilities and costs arising from RJFS's representation of Hamant in the *Taton* arbitration constitutes a breach of section 15 of the FA Agreement.
6. As a direct and proximate consequence and result of Hamant's breach of the FA Agreement, RJFS has suffered damages.

COUNT III

(Breach of Contract Against Scanlon)

7. RJFS incorporates by reference and realleges the facts set forth above.
8. Scanlon's failure to reimburse RJFS for all liabilities and costs arising from RJFS's representation of Scanlon in the Taton arbitration constitutes a breach of section 15 of the FA Agreement.
9. As a direct and proximate consequence and result of Scanlon's breach of the FA Agreement, RJFS has suffered damages.

COUNT IV

(Claim Against Bishop for Violation of the Virginia Computer Crimes Act, Va. Code Ann. § 18.2-152.1 et seq.)

10. RJFS incorporates by reference and realleges the facts set forth above.
11. On or about November 30, 2004, without authority and under false pretenses, Bishop accessed RJFS's computer network and obtained copies of customer records and blotter information in violation of Va. Code Ann. §§ 18.2-152.3 and 18.2-152.4(6)
12. RJFS has been injured by reason of Bishop's violation of Va. Code Ann. §§ 18.2- 152.3 and 18.2-152.4(6) and is entitled to recover damages pursuant to Va. Code Ann. § 18.2-152.12(A).

PRAYER FOR RELIEF

WHEREFORE, RJFS respectfully requests that this Panel enter judgment in its favor and against Bishop, Hamant, and Scanlon, and:

(a) Award RJFS compensatory damages in the amount of $98,361.82 plus interest;
(b) Award RJFS reasonable attorneys* fees and other expenses incurred in this matter; and
(c) Award such other relief as the Panel may deem appropriate, just, and proper.

Respectfully submitted,
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
/S/

Stephen G. Cochran
Counsel for Raymond James Financial Services, Inc.

cc: Terrance A. Bostic, Esquire

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of this Answer, Affirmative Defenses, and Counterclaims to be fiirnished this 28th day of October, 2005 by U.S. Mail, postage prepaid to Jay J. Levit, Levit & Mann, P.C., 1301 North Hamilton Street, Suite 100, Richmond, VA 23230-3959, Counsel for Claimants.

/S/
Stephen G . Cochran

EXHIBIT 6

IN ARBITRATION PROCEEDINGS BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

THOMA W.BISHOP, STEVEN E. HAMANT, and TIMOTHY E, SCANLON,
Claimants,

v. Case No. 05-04391

RAYMOND JAMES FINANCIAL SERVICES, INC.,
Respondent

RAYMOND JAMES FINANCIAL SERVICES, INC'S MOTION TO DISMISS

Pursuant to Rule 10305 of the NASD Code of Arbitration Procedure, Respondent Raymond James Financial Services, Inc., by counsel, hereby moves this Panel to dismiss the Statement of Claims filed by Thomas W. Bishop, Steven E. Hamant, and Timothy E. Scanlon for failure to state a claim upon which relief can be granted. The reasons for this motion are set forth in the accompanying memorandum.

Dated: December 12, 2005

Respectfully submitted,

/S/

Stephen G. Cochran (Va. Bar No. 12956)
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Counsel for Raymond James Financial Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of this Motion to Dismiss to be furnished this 12th day of December, 2005 by U.S. Mail, postage prepaid to Jay J. Levit, Levit & Mann, P.C., 1301 North Hamilton Street, Suite 100, Richmond, VA 23230-3959, Counsel for Claimants.

____/S/_____
Stephen G. Cochran

EXHIBIT 7

IN ARBITRATION PROCEEDINGS BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

THOMAS W. BISHOP, STEVEN E. HAMANT, and TIMOTHY E. SCANLON,

Claimants,

v.

Case No. 05-04391

RAYMOND JAMES FINANCIAL SERVICES, INC.,

Respondent,

RAYMOND JAMES FINANCIAL SERVICES, INC.'S

REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

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INTRODUCTION

Raymond James Financial Services, Inc. ("RJFS") respectfully submits this Reply Memorandum in Support of its Motion to Dismiss, responding to the Opposition Briefs filed by Claimant Thomas W. Bishop ("Bishop") and jointly by Claimants Steven E. Hamant ("Hamant") and Timothy, E. Scanlon ("Scanlon"). The initial Statement of Claims was filed jointly on behalf of, and without differentiation among, the Claimants, and RJFS filed a motion to dismiss all claims arguably raised in the Statement as though each claim had been raised on-behalf of each Claimant.

In their Opposition Brief, Hamant and Scanlon do not contest RJFS's Motion to Dismiss claims of "inducement,"[1] breach of fiduciary duty,[2] and violation of trade principles,[3] thereby limiting the claims contested on their behalf to wrongful termination, tortious interference with contract, conspiracy, and the Virginia Retail Franchising Act. *See* Hamant & Scanlon Opp. Br. at 7-11. Similarly, Bishop does not contest RJFS's Motion to Dismiss claims for alleged violation of the Virginia Retail Franchising Act.[4] See Bishop Opp. Br. at 2-7.

PRELIMINARY STATEMENT

The Statement of Claims asserts that RJFS induced Claimants Bishop, Hamant and Scanlon to

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[1] RJFS Men. Supp. Dis. At 5-8.

[2] Id. At 12-13.

[3] Id. At 16.

[4] Id. At 11-12.

affiliate with RJFS and then wrongfully terminated that relationship, that RJFS' Associate Corporate Counsel, Terrance Bostic, withdrew from the defense of Claimant Bishop in an NASD-DR arbitration, and that RJFS then settled with the claimant in that arbitration.

In response, RJFS filed a Motion to Dismiss pointing out that Claimants have not alleged any conduct by RJFS that would authorize this panel to award them relief. Instead of addressing the legal deficiencies in their claims, Claimants responses appeal to inapplicable non-legal concepts or to wholly unsupported and novel statements of "law."

- Claimants do not dispute that their agreements with RJFS were terminated in accordance with the express terms of those contracts?
- Claimants do not dispute that the only business or contractual relationship that RJFS allegedly interfered with was their relationship with RJFS.
- Claimants do not dispute that their Agreements with RJFS establish an independent contractor relationship.
- Claimants do not dispute that they had resigned from RJFS prior to Bostic's withdrawal as Bishop's counsel.
- Claimants do not dispute that Bishop secured substitute counsel, McGuire Woods, to represent him after Bostic's withdrawal.

Claimants do not have a legal claim against RJFS. This panel is not authorized to award relief where Claimants have no legally viable claim. *See, e.g., Hughes-Bechtol, Inc. v. West Virginia Board of*

Regents, 527 F. Supp. 1366, 1382 (S.d. Ohio 1981) (United States Arbitration Act "creates no new legislation [and] grants no new rights...") (citing 65 Cong. Rec. 1931 (1924) (remarks of Rep. Graham)); *cf. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) (holding that by agreeing to arbitrate, party does not agree to alter its rights, it only submits to their resolution in arbitral, rather than judicial, forum).

Indeed, in such a case, the claims should be dismissed without hearing. *See First Preservation Capital, Inc. v. Smith Barney, Harris Upham & Co., Inc.*, 939 F. Supp. 1559, 1564- 66 (S.D. Fla. 1996) (explaining that arbitrators have power to dismiss claims with prejudice Without hearing). Claimants' allegations and contentions regarding this matter are without legal merit. Claimants' Statement of Claims should therefore be dismissed.

ARGUMENT

I. CLAIMANTS HAVE NO WRONGFUL TERMINATION CLAIM

RJFS terminated its relationship with Claimants in accordance with the express terms of its contracts with them.[5] Accordingly, Claimants have no claim for any wrongful termination.

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[5] On March 8, 2001 Claimants each entered into a Financial Advisor ["FA") Agreement with RJFS. Bishop, who was appointed branch manager, also entered into an Independent Sales Associate ("ISA") Agreement with RJFS. (Ex. A-D to RJFS Mem. Supp. Dismissal)

A. The Express Terms of a Contract Control over Implied Terms

Claimants do not dispute that RJFS complied with the express terms of the contracts, but instead attempt to boot-strap an implied "for cause" termination requirement into these contracts, because arbitration is available through the NASD for settling employment-related disputes. They rely on cases reviewing contracts containing no specific termination provisions and holding that a "just cause" limitation should be implied from the existence of an arbitration agreement. See Hamant & Scanlon Opp. Br. at 7.

This argument is misplaced because, unlike those cases, the express terms of Claimants' contracts with RJFS provide for termination without cause with five days notice. These express terms control over any implied terms as a *matter of law*. *See, e.g., Children's Surgical Foundation, Inc. v. National Data Corp.*, 121 F. Supp. 2d 1221, 1228 (N.D. 111. 2000) ("The court will not allow an implied duty.. .to control over the express terms of the contract."); *Leisure Unlimited, Inc. v. Department 56, Inc.*, 1996 WL 684406, *2-*3 (D. Conn. May 3, 1996) (holding express contract term permitting unilateral termination without cause controls over implied limitations of cause, attached as Exhibit 1); *Cox v. CSX Inter modal, Inc.*, 732 So. 2d 1092, 1098 (Fla, App. 1999) ("[T]he implied obligation of good faith cannot be used to vary the express terms of a contract.").

B. RJFS Lawfully Terminated the Contracts

Claimants have no legally cognizable claim for wrongful termination because it is undisputed that RJFS complied with the express terms of the FA and ISA agreements. The FA and ISA Agreements expressly authorized RJFS to terminate the Claimants without cause with five days written notice. See FA Agr. §.3(a).ISA Agr.J 3 (Ex. A-D to RJFS Mem. Supp. Dismissal). On April 27, 2004, RJFS indisputably provided five days written notice of its intention to terminate the registration of Bishop and Michael Finnie with RJFS, which effectively terminated Hamant and Scanlon's affiliation with RJFS.[6] See Hamant & Scanlon Op. Br. at 5; Apr. 27, 2004 email of Scott Whitley of RJFS to Michael Finnie et al. (Ex. K to RJFS Axis.). This action by RJFS complies with the express terms of the FA and ISA Agreements, which control as a matter of law over any standard that might otherwise be implied from an arbitration provision.

Claimants Hamant and Scanlon also refer to provisions of the RJFS Compliance Manual, which define the circumstances under which RJFS should

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[6]Indeed, RJFS went beyond providing Claimants with the contractually required five-day notice period prior to termination. It is undisputed that RJFS agreed to give Claimants thirty days to find another broker/dealer or to consider affiliating with another RJFS branch and then agreed to another extension of lime to affiliate with another branch. The Claimants chose not to affiliate with another RJFS branch and voluntarily resigned from RJFS on or about June 25, 2004 to join a new broker/dealer, LPL. These facts remain undisputed by Claimants.

place its branches, branch managers, or financial advisors under "heightened supervision" to ensure "compliance with RTFS and industry rules and regulations," and seem to imply that RJFS could not terminate their agreements unless they had been previously placed on "heightened supervision." See Hamant & Scanlon Op. Br. at 3-4 (discussing as "facts" in ¶¶ 4-5, but making no legal argument based on these "facts"). There,, is no Tactual or legal linkage between the Compliance Manuals and the express termination provisions in the FA and ISA Agreements, and neither the Agreements nor the Compliance Manuals provide that placing a branch or individual on heightened supervision is a condition precedent that must be satisfied prior to termination. As set forth in the FA and ISA Agreements, the only precondition for termination is a five-day notice period, which RJFS indisputably provided to Claimants.

II. RJFS CAN NOT INTERFERE WITH ITS OWN CONTRACT OR WITH CLAIMANTS' BUSINESS EXPECTATIONS AS THEY RELATE TO RJFS

Claimants, argue that RJFS tortiously interfered with Claimants' contracts or business expectations by alleging that RJFS pressured managers of other RJFS branches not to hire them. Even assuming that this allegation is true, Claimants have not stated any legally cognizable claim for tortious interference with their contracts or business expectations. *See, e.g., Fox v. Deese*, 362 S.E.2d 699, 708 (Va. 1987); *Genet Co. v. Anheuser-Busch, Inc.*, 498 So. 2d 683, 684 (Fla. App. 1986)

("Under Florida law, a cause of action for tortious interference does not exist against one who is himself a party to the business relationship allegedly interfered with.").

Claimants simply fail to allege in either the Statement of Claims or in their Opposition Briefs that RJFS interfered with any contractual relationship or business expectancy that Claimants had with a third person. Therefore, Claimants have not stated a tortious interference claim as a matter of law, and these claims should be dismissed.

III. CLAIMANTS' CONSPIRACY CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

In his Opposition Brief, Bishop clarifies that the common-law and statutory conspiracy claims set forth in the Statement of Claims — based on the withdrawal of Terrance Bostic, RJFS' Vice President and Associate Corporate Counsel, from representation of Bishop, combined with RJFS' subsequent, agreement to settle with Gary Stewart of National Securities ("Stewart") - are grounded in a Virginia case, stating that. "one such as RJFS can be held liable for conspiracy to breach its own contract." Bishop Opp. Br. at 6. In addition to the reasons stated in RJFS' Memorandum, the Claimants' conspiracy claims also fail because there was no contract between RJFS and any of the Claimants at the time of Bostic's withdrawal from representing Bishop in the Stewart matter.

A. Claimant Bishop's Voluntary Resignation from RJFS Precludes His Claim of Conspiracy to Breach RJFS' Own Contract

Claimants had already voluntarily resigned from RJFS prior to Bostic's withdrawal.[7] At the time of Claimants' voluntary resignations, any and all agreements between RJFS and Claimants were terminated. *See* FA Agr. ¶3(c) & ISA Agr. ¶ 3 (Ex. A-D to RJFS Mem. Supp. Dismissal); *Falls* v. *Virginia State Bar,* 397 S.E.2d 671, 673 (Va. 1990) (employment contracts are terminated by operation of law upon resignation of employee); *Frumkes* v. *Beasley-Reed Broadcasting of Miami, Inc.,* 533 So. 2d 942, 943 (Fla. App. 1988) (holding resignation of employee terminated employment contract). Consequently, at the time of Bostic's withdrawal, no contracts existed between RJFS and Claimants for RJFS to breach, much less to conspire to breach.

B. Claimants Have Suffered No Statutory Business Damages as a Result of the Alleged Conduct of RJFS and Have Failed to Allege any Unlawful Purpose or Means

As was made clear in RJFS' Memorandum, Claimants have not alleged or suffered any business damages resulting from the alleged conduct of RJFS, First, Hamant and Scanlon were not involved in the Stewart matter, and can allege no harm from Bostic's withdrawal from representation of Bishop in that matter.

Second, Claimants only allege damages to their "professional career" and a "loss of compensation." Statement of Claims, ¶ 14(a). These types of losses are not considered to be business

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[7]Claimants all voluntarily resigned from RJFS on or about June 25, 2004 to join a new broker/dealer LPL. *See* Ex. L to RJFS' Ans. Bostic withdrew as counsel for Bishop on December], 2004.

damages under the Virginia Business Conspiracy Statute. *See Buschi* v. *Kirven,* 775 F.2d 1240, 1259 ("action for treble damages for injury to the professional reputation of the plaintiffs... make[s] no claim of a business-related injury"). The damage alleged to have been done by RJFS to Claimants is essentially damage to their opportunity for future employment, which is characterized by Virginia law as personal, not business-related, damage, and is not actionable under the Virginia Business Conspiracy Statute. *Id.*

Finally, Claimants have failed to identify any unlawful purpose or unlawful means for this alleged conspiracy. Without any unlawful purpose or unlawful means, there can be no common-law conspiracy. *Hechler Chevrolet, Inc. v. Gen. Motors Corp.,* 337 S.E.2d 744, 748 (Va. 1985). For the above stated reasons, Claimants' statutory and common-law conspiracy claims should be dismissed.

IV. CLAIMANTS ARE NOT FRANCHISEES OF RJFS (CONTESTED ONLY BY HAMANT AND SCANLON)

Under the Virginia Retail Franchising Act, a franchise requires "a written contract or agreement between two or more persons, by which: ... [t]he franchisee is required to pay, directly or indirectly, a franchise fee of $500 or more." Va. Code Ann. § 13.1-559(b). It is undisputed that the only agreements that have ever existed between Claimants and RJFS are the FA and ISA Agreements. The FA and ISA Agreements are not franchise agreements. The Agreements specifically state: "[Claimant's] performance under this Agreement shall be as an Independent Contractor." FA & ISA Agr. ¶ 2 (Ex. A-

D to RJFS Mem. Supp. Dismissal). It is undisputed that the FA and ISA Agreements do not require the Claimants to pay, directly or indirectly, a franchise fee of any amount.

Claimants Hamant and Scanlon offer no legal authority to support their assertion that "the definition of 'franchise' is satisfied" by the instant matter. Hamant & Scanlon Op. Br. at 11. Instead, they claim that they paid a $ 150 per month technology access fee and 10% of their earnings to RJFS as a franchise fee. *Id.* This is akin to a real estate agent claiming that the percentage the agent must pay to the agent's broker on any commissions earned or any monthly fee paid to the broker is a franchise fee. *See Morrison v. Avis Reni-A-Car Systems, Inc.*, 2003 WL 23119903, *5 (W.D. Wash. 2003) (Plaintiff's "argument that it paid a franchise fee in the form of the ninety percent of sales retained by Avis is without merit. Such an interpretation would convert every commissioned sales person in a clothing store into a franchise... "Attached as Exhibit 2).

In addition, this claim completely ignores the fact that, pursuant to the terms of the FA and ISA Agreements, Claimants never paid a percentage of their earnings to RJFS. *See* ISA Agr. ¶ 11 & FA Agr. ¶ 9 (Ex. A-D to RFFS Mem. Supp. Dismissal). Instead, RJFS paid Bishop "a portion of the gross commissions or fees earned on each transaction or account" and Bishop, in turn, was responsible for paying Hamant and Scanlon according to the terms of his agreement with them. *See* ISA Agr. ¶11 & FA Agr. ¶ *9* (Ex. A-D to RFFS Mem. Supp. Dismissal) ('Payment of commissions or fees to the FA is the subject of the FA's agreement with the Associate...").

A relationship between parties cannot be deemed a franchise where there is no evidence that a franchise fee has been paid. *JBG Indus., Inc.* v. *Simon-Telelect, Inc.*, 223 B.R. 901, 908 (E.D. Va. Barrier. 1997). Because the Agreements are *specifically* independent contractor agreements and do not require the payment of a franchise fee, Claimants' Retail Franchising Act claim should be dismissed for failure to state a claim upon which relief can be granted.

V. CLAIMANTS FAIL TO STATE A CLAIM FOR FRAUDULENT INDUCEMENT OR BREACH OF CONTRACT (CONTESTED ONLY BY CLAIMANT BISHOP)

While the Statement of Claims does not set forth exactly what causes of action it alleges, it appears to allege a claim for fraudulent inducement and/or promissory estoppel. *See* Statement of Claims, ¶¶ 2, 3, and 14(b). Apparently realizing that he cannot plead the elements necessary to state a claim for fraudulent inducement and that Virginia does not recognize a cause of action for promissory estoppel, Bishop now clarifies that his "claims go to breach of contract" instead of fraudulent inducement or promissory estoppel. Bishop Opp. Br. at 6. But Bishop does not specify how the FA or ISA Agreements have been breached by RJFS.

Under Virginia and Florida law, the elements of a breach of contract action include: "(1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant's violation or breach of that

obligation; and (3) injury or damage to the plaintiff caused by the breach of obligation." *Ulloa v. QSP, Inc.*, 624 S.E.2d 43, 48 (Va. 2006); *J J. Gumberg Co.* v. *Janis Services, Inc.*, 847 So. 2d 1048, 1049 (Fla. App. 2003). Claimants do not assert that RJFS violated or breached any legally enforceable obligation that RJFS owed them. Nor could they -- it is undisputed that the only agreements between Claimants and RJFS are the FA and ISA Agreements. Not only do these Agreements expressly authorize RJFS to terminate them without cause on five days written notice, they each contain a merger clause that precludes Claimants from asserting reliance on representations allegedly made to them by RJFS but not included in the FA and/or ISA Agreements. *See* FA Agr. §§ 3(a), 22 & ISA Agr. §§ 3, 27 (Ex. A-D to RFFS Mem. Supp. Dismissal). As noted earlier, it is undisputed that RJFS complied with the express termination requirements of these Agreements. Accordingly, the; Claimants' breach of contract claim should be dismissed for failure to states claim upon which relief can be granted.

VI. CLAIMANTS HAVE STATED NO CLAIM FOR BREACH OF FIDUCIARY DUTY (CONTESTED ONLY BY BISHOP)

Claimant Bishop does not dispute that, after Bostic withdrew from representation, Bishop obtained representation in the Stewart matter from McGuire Woods, nor does he even address the basis for RJFS' Motion to Dismiss, i.e. that he has failed to allege any damages resulting from this alleged breach. Instead, he raises curious and immaterial

discrepancies in the words used by RJFS or its counsel to explain that Bostic withdrew from representation once RJFS discovered the unauthorized access to its computer systems by Bishop or one of his colleagues and RJFS and the FBI were investigating whether to pursue charges against Bishop. Because Bishop has no legally cognizable damages, and indeed has alleged no damages, from this alleged breach of fiduciary duty, this claim should be dismissed.

VII. RJFS HAS ADDRESSED CLAIMANTS ASSERTIONS ON THE BASIS OF THE APPLICABLE RULES OF LAW

Bishop accuses RJFS of ignoring the relevancy of the NASD and its rules and regulations and blasts RJFS for citing Virginia law in RJFS' Memorandum, ignoring the facts that RJFS was attempting to decipher the nature of the claims asserted in this matter from the Virginia cases cited in the Statement of Claims, that he has raised claims under the Virginia Business Conspiracy Statute, and that all events giving rise to his alleged tort claims occurred in Virginia. Like the Statement of Claims, the discussion of alleged violations of the "just and equitable principles of trade" in Bishop's Response is vague and fails to cite any specific principles that RJFS has allegedly violated. Moreover, no authority cited by Bishop indicates that a private right of action for brokers has been created for alleged violations of these unspecified principles. In contrast, RJFS, in its Answer, Affirmative Defenses and Counterclaims, Memorandum in Support of its Motion to Dismiss and this Reply Memorandum,

cites specific cases and statutes requiring dismissal of all causes of action arguably contained in the Statement of Claims.

CONCLUSION

For the foregoing reasons, RJFS respectfully requests that this Panel dismiss the Statement of Claims in its entirety and award RJFS its costs incurred in defending this arbitration proceeding, including all forum fees.

Dated: March 27, 2006

Respectfully submitted,

/S/

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of this Memorandum in Support of Raymond James Financial Services, Inc.'s Motion to Dismiss to be furnished this 27th day of March, 2006, by U.S. Mail, postage prepaid to Jay J. Levit, Levit & Mann, P.C., 1301 North Hamilton Street, Suite 100, Richmond, **VA** 23230-3959, Counsel for Bishop, and to Scott Gregory Crowley, Crowley & Crowley, Forest Plaza One, 7201 Glen Forest Drive, Suite 106, Richmond, **VA** 23226, Counsel for Hamant and Scanlon.

/S/

Stephen G. Cochran

United States District Court, D. Connecticut
LEISURE UNLIMITED, INC

DEPARTMENT 56, INC.
Civil No. 3:95cv2039 (AHN)
May 3, 1996.

RULING ON MOTION TO DISMISS

NEVAS, District Judge.

*1 The plaintiff, Leisure Unlimited, Inc. ("Leisure"), brings this diversity action against the defendant, Department 56, Inc. ("Department 56"), alleging that its termination of a dealership policy with Leisure constitutes breach of contract and the implied covenant of good faith and fair dealing and violates the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-110a-q, and the Connecticut Franchise Act ("Franchise Act" or "Act"), Conn. Gen. Stat. §§ 42-133e-g.

Presently pending is Department 56's motion to dismiss. For the reasons that follow, its Motion to Dismiss [doc. # 5] is GRANTED in part and DENIED in part.

STANDARD

When considering a Rule 12 (b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert, denied, 504 U.S. 911 1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted.

See Hishon v. King & Spaulding. 467 U.S. 69, 73 (1984); Frasier v. General Elec.' Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232).

FACTS

For the purposes of defendant's motion to dismiss, the court accepts the following facts as true. In 4987, Leisure agreed with Department 56 to sell and distribute Department 56 products. (See Compl. *First Count 3.)* On February 11, 1994, the parties renewed this agreement and Leisure continued as an authorized dealer of Department 56 products. (*Id* ¶4.) Specifically, Leisure executed an Authorized Village Dealer Policy and an Authorized Snowbabies Dealer Policy. (*Id* Exs. A & B.)

Leisure at all times fully complied with the terms and conditions of the dealership policies, including their creditworthiness and product integrity requirements. (*Id*. 6.) On January 31, 1995, Department 56 unilaterally terminated both dealership policies despite Leisure's full performance and compliance. (*Id*. 7,8.) [FN 1]

FN1. The parties agree that Connecticut law governs this diversity action because the place of operative effect of the dealership policies is Connecticut. *See D.P. Technology Corp.* v. *Sherwood Tool, Inc.*, 751 F. Supp. 1038, 1040 n.3 (D. Conn. 1990) ("if the contract is to have its operative effect or place of performance in a jurisdiction other than the place where it was entered into, the law of the place of operative effect or performance governs its validity

and construction")

DISCUSSION

1. *Breach of Contract*

In the First Count, Leisure claims that Department 56's unilateral termination of the dealership policies constitutes willful and malicious - breach of contract. Department 56 argues that it had every right to terminate the policies in this fashion because both the Authorized Village .Dealer Policy and the Authorized Snowbabies Dealer Policy expressly permit Department; 56 to unilaterally discontinue business with Leisure. The court agrees.

As the Second Circuit has noted in the context of collective bargaining agreements "(i)f the contract allows a party to terminate unilaterally, a proper 'repudiation' ends the contract, and the parties' contractual obligations; if the contract does not provide a right to terminate unilaterally, repudiation does, not terminate the contract, but instead breaches it." *Rochdale Village, Inc.* v. *Public Serv. Emp. Union,* 605 F.2d 1290, 1297 (2d Cir. 1979).

In Connecticut, "the determination of what the parties intended by their contractual commitments is a question of law." *Thompson & Peck, Inc.* v. *Harbor Marine Contracting Corp.*, 203 Conn. 123, 131 (1987). Further, "[i]t is axiomatic that a party is entitled to rely upon its written contract as the final integration of its rights and duties." *Zullo* v. *Smith,* 179 Conn. 596, 601 (1980). "Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms" *Barnard* v. *Barnard,* 214 Conn. 99, 110 (1990), and courts "will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity." *Zullo,* 179 Conn, at 601.

*2 Based on these principles, the court concludes that the terms of the policies permitted Department 56 to unilaterally terminate Leisure's authorized dealerships without cause or notice. The terms of both the Authorized Village Dealership Policy and Authorized Snowbabies Dealer Policy expressly provide that "[t]he decision to open or maintain a [dealership] account and the decision to accept any order is *in the sole and complete discretion of [[[Department 56].*" (*See Compl.* Exs. A & B.) (emphasis; added). Moreover, the policies contain virtually identical termination provisions which" state:

> DEPARTMENT 56, INC. REQUIRES ITS CUSTOMERS TO BE CREDITWORTHY,AND IS COMMITTED TO MAINTAINING THE INTEGRITY AND VALUE OF ITS PRODUCT LINE. *DEPARTMENT* 56, *INC. THEREFORE RESERVES THE RIGHT TODISCONTINUE DOING BUSINESS WITH ANYDEALER OR LIMIT THE AVAILABILITY OF' ONE OR MORE PRODUCTS TO ANY DEALER.AT ANY TIME WITHOUT NOTICE FOR ANY REASON.* IN THE EVENT OF TERMINATION OR PRODUCT AVAILABILITY RESTRICTION, DEPARTMENT 56, INC. RESERVES THE RIGHT TO REPURCHASE ANY OR ALL OF A DEALER'S ... PRODUCT INVENTORY AT THE PRICE PAID TO DEPARTMENT 56, INC. BY THE DEALER.
>
> *(Id.) (emphasis added).*

Relying solely on the language of the policies, Leisure argues that the termination provisions of the policies are specifically limited to issues involving creditworthiness and maintenance of product

lineintegrity and value and, therefore, Department 56 could only terminate die dealerships on these grounds. It contends that such a limitation can be inferred from both policies by the appearance of the termination provisions under a section entitled "Credit Rating", and from the first sentence of the provision itself. *(Id)* The court disagrees.

Leisure's argument runs counter to the lay-out and plain wording of the policies. First, although the termination provision does appear below the section heading "Credit Rating" in the policies, it is not associated with that topic. Both policies contain an introductory paragraph followed by three boldface sections containing one or more paragraphs introduced with a bullet symbol. The "Selling Policies" section is followed by three bulleted paragraphs, "Presentation of Product" - two, and "Credit Rating" - one. These sections are in turn followed by five untitled paragraphs, including the termination' provision. Unlike the paragraphs associated with a specific sections, each of these untitled paragraphs is not introduced with a bullet and hence is a general application paragraph unrelated to any section. *(Id.)*

Second* even though the second sentence of the termination provision does follow a reiteration of the creditworthiness and product integrity requirements contained in the first sentence of the provision, it is expressly provides that the policies can, be, terminated. "AT ANY TIME WITHOUT NOTICE FOR ANY REASON," To read Leisure's suggested limitation into this clause would render the term "ANY .REASON." meaningless. Therefore, the court concludes, that this clause is an unambiguous and unqualified statement permitting

Department 56 to terminate the policies at any time without notice for any reason that it deemed sufficient. *See Corenswet, Inc.* v. *Amana Refrigeration, Inc.,* 594 F.2d 129, 135 (5th Cir. 1979), *cert, denied,* 444 U.S. 938 (1979) (interpreting distributorship, *contract* authorizing termination "at *any.* time and, for any reason" as permitting defendant to terminate the contract "for any reason that the *actor-deems* sufficient," free from implied limitations of cause). *See also Barnard,* 214 Conn, at 110; *Zullo,* 17.9 Conn, at 601.

*3 When asked at oral argument whether Department 56 had made any promise *n o t* to terminate the policies in accordance with the termination provisions so as to estop them from relying on the provisions, Leisure suggested that the parties renewal of their dealership relationship implies such a promise. This argument fails because the parties renewal executed the very policies which expressly permit Department 56 to unilaterally terminate the relationship. To the extent that Leisure is implying that the parties' past relationship and conduct between the parties created a reasonable expectation that Department 56 would not terminate the dealership unilaterally, this argument also fails. *See Corenswet,* 594 F,2d at 136 (express contract term permitting unilateral termination without cause controls over past conduct of the parties).

Accordingly, because the policies unambiguously permit Department 56 to unilaterally terminate Leisure's authorized dealerships and Department 56 did not promise otherwise, the First Count fails to state a claim upon-relief can be granted.

II *CUTPA*

Count Two alleges that Department 56's unilateral termination of the authorized dealer contracts constituted unfair or deceptive act in violation of CUTPA. At oral argument, plaintiffs counsel conceded that if the court dismissed Leisure's contract claim, its CUTPA claim necessarily failed because it is entirely predicated on Department 56's alleged breach of the dealership policies.

Based on these representations, the court dismisses leisure's CUTPA claim in Count Two.

III. *Franchise Act*

In the Third Count, Leisure alleges that Department 56's conduct violated the provisions of the Franchise Act. Department 56 argues that this claim must be dismissed because the parties' relationship was not a franchise within the meaning of the Act. Specifically, it contends that the dealership policies never prescribed or imposed a marketing plan or system on Leisure and that Leisure never became substantially associated with Department 56 or its products.

Under the Franchise Act, a franchise relationship may not be terminated except upon good cause shown and sixty days written notice. Conn. Gen. Stat. § 42- I33f(a). The Act defines a franchise as: an oral or written agreement or arrangement in which (1) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor ... and (2) the operation of the franchisee's business

pursuant to such a plan or system is substantially associated with the franchisor's trademark, service mark, tradename, logotype, advertising or other commercial symbol designating the franchisor or its affiliate....

Id. § 42-133e.

A. *Marketing Plan*

This prong of the definition focuses on the amount of control asserted by the franchisor over the, conduct of the franchise's business. *See Chem-Tek, Inc. v. General Motors CORP*, 816 F. Supp. 123, 128-129 (D. Conn., 1993). Relevant indicia of control include control over hours and days of operation, advertising, financial support, auditing of books, inspection, of premises lighting, employee uniforms, prices, trading stamps, hiring, sales quotas and management, training *Id* at 129 (citing *Consumers Petrol, of Connecticut, Inc v. Duhan,* 38 Conn. Supp. 495, 498-99 (1982)). However, "[t]here is no such precise formula as to how many of such factors must exist, in the aggregate, before the control exercised by the manufacturer rises to a marketing plan or system prescribed in substantial part by a franchisor." *Sorisio v. Lenox,* 701 F. Supp. 950, 960 (D. Conn. 1988)."

*4 The complaint refers to the dealership policies as marketing plans, *(see* Compl, Third Count ¶4, Exs. A & B), and alleges that Department 56 controlled product pricing, inventory, display, labeling and identification, and illumination. *(Id* ¶ 9, 10.) Drawing all inferences in Leisure's favor, the court concludes that Leisure has alleged sufficient,

albeit weak, indicia of control and that dismissal of the Franchise Act claim would be premature at this stage of the proceedings based on the fact-intensive nature of this inquiry. *See Petereit v. S.B. Thomas, Inc.* 63 F.3d 1169, 1179-81 (2d Cir. 1995) (concluding franchise existed based on twenty-three "findings" by district court; noting that "ability to set prices is quite indicative of a franchisor's control."), *cert, denied,* 116 S. Ct. 1351 (1996); *Chem-Tek,* 816 F. Supp. at 129 (plaintiff alleged sufficient indicia of control to survive motion to dismiss where complaint alleged that GM directed employment of plaintiffs management personnel, provided financial assistance, and set purchase prices). [FN2]

FN2. Department 56 argues that the alleged price controls are mere guidelines and that the degree of control exhibited in this case is less than that in *Sorisio,* and therefore fails as a matter of law. See *Sorisio* 701 F. Supp. at 960-61 (no franchise where luggage sales restricted to retail customers in certain locations, manufacturer suggested retail prices, and instruction on product display and "imaging criteria" were "prescriptive measures" but not "operational control."). *Sorisio,* however, was decided in the context of a motion for summary judgment. *Id* at 962. Whether Department 56's alleged price controls are mere guidelines or "operational controls" is an issue better determined on a more developed record.

B. *Substantial Association*

The requirement that the conduct of the franchisee's business be substantially associated with the franchisor's trademark does not require exclusivity.

See Grand Light & Supply Co. v. *Honeywell, Inc.*, 771 F.2d 672 (2d Cir. 1985). Rather, the franchisee must be sufficiently dependent on the franchisor such that an abrupt termination of the relationship would be disastrous to the franchisee. *Id.* at 677 *Chem-Tek*, 816 F. Supp. at 129.

The complaint alleges that 1) Leisure became substantially associated with Department 56's trademarks and logos, (*see* Compl. Third *Count*¶ *5*), 2) that its product line comprised a significant portion of Leisure's holiday sales (*id* ¶8), and 3) that, due to its abrupt termination of the dealership, Leisure "suffered great financial damage, loss of business, and...injury to its business reputation...." (*Id* 13).

Although such allegations of association are not compelling, *see, e.g., Grand Light & Supply, 771* F.2d at 677 (purpose of Act to protect businesses that depend on product "for most or all of [their] business" such that abrupt severance "could spell ruination"); *Sorisio,* 701 F. Supp. at 961-62 (summary judgment appropriate where defendant's products constituted less than ten percent of plaintiffs total, business, purchases), the court concludes that Leisure, has sufficiently pled this prong of the. Act at this stage of the proceedings. The questions of what percentage of Leisure's business relied on Department 56 products and how much damage they incurred by the termination of the dealership policies cannot be resolved on the limited record before the court.

Accordingly, because Leisure has sufficiently pled the existence of a marketing plan, and indicia of control, it is entitled to offer evidence to-prove these allegations.

V. *Implied Covenant,-of Good Faith and Fair Dealing*

*5 Count Four alleges that Department 56's termination of the dealership policy breached the implied covenant of good faith and fair dealing arising from those agreements. Department 56 argues that, because the terms of dealership agreements expressly provide for unilateral termination by Department 56, the covenant of good faith and fair dealing may not be applied to override such terms. The court agrees.

Under Connecticut law, the duty of good faith and fair dealing is implied in every contract. *See Magnan* v. *Anaconda Indus., Inc.,* 193 Conn. 558, 566-67 (1984); 2 Restatement (Second), Contacts § 205 (1979); Conn. Gen. Stat, § 42a-l-203. "[I]t is a rule of construction designed to fulfill the reasonable expectations of the parties as they reasonably intended. The principle, therefore, *cannot be applied to achieve a result contrary to the clearly expressed terms of a contract, unless, possibly, those terms are contrary to public policy*" *Magnan,* 192 Conn, at 567 (emphasis added). *See also Zullo,* 179 Conn, at 601.

This rule applies equally in the context of dealership or distributorship agreements which expressly permit termination without cause. *See, eg. Grand light & Supply,* 771 F.2d at 678 (where sales and distribution contract expressly provided for termination on thirty day's notice by either party, good faith requirement of Conn. Gen. Stat. § 42a-l-203 could not be implied to override this contractual, provision); *Corenswet,* 594 F.2d at 135, 138 (where distributorship agreement expressly provided

that defendant could terminate agreement "at -any time for any reason", I.C.A. § 554.1203 [U.C.C. § 1-203] could not be used to imply a terra that bars termination without cause or reason).

Accordingly, because the court concludes mat the express terms of the policies allowed Department 56 to terminate the dealerships unilaterally and without cause and, absent any allegation by Leisure' that the policies' terms violated public policy, Count Four fails to state a claim.

CONCLUSION

For the foregoing reasons, Department 56's Motion to Dismiss [doc. # 5] is GRANTED as to Counts One, Two, and Four, and DENIED as to Count Three. Leisure will file an amended complaint in accordance with this ruling within thirty (30) days hereof.

Not Reported in F.Supp., 1996 WL 684406 (D.Conn.)

END OF DOCUMENT

United States District Court, W.D. Washington, at Seattle.
JON K. MORRISON, INC., .et al, Plaintiff(s),
AVIS RENT-A-CAR SYSTEMS, INC.,
Defendant(s).
No- C02-2383P

November 2003

Order Granting Summary Judgment in Favor of Defendant

*1 This matter comes before the Court on the parties' cross motions for summary judgment Dkt. Nos. 23, 25. Plaintiffs brought this action alleging violations of Washington's Franchise Investment Protection Act ("FIPA"), RCW 19.100. Specifically, plaintiffs complained that defendant Avis Rent-A-Car Systems, Inc. ("Avis") terminated or failed to renew the operating contract between the parties by which plaintiffs rented Avis' cars on Avis' behalf, and that this termination or failure to renew was done without appropriate compensation as provided in the act. The parties both move for summary judgment on the issue of whether or not the parties' agreement in fact formed a franchise. Defendant also moves for summary judgment on several other alternative bases, arguing that no employer-employee relationship existed, that certain other alleged violations were barred by the statute of limitations, that no damages were incurred, and that there was no improper "diversion of business." Having reviewed the papers and pleadings submitted by the parties, the Court hereby GRANTS summary judgment in favor of defendant Avis, as no franchise was created by the agreement. Further, no employer-employee relationship existed.

Finally, no improper "diversion of business" occurred. The Court declines to reach the remaining issues, as those decided above dispose of the present case.

BACKGROUND

In 1992 plaintiff Jon K. Morrison, Inc. signed an "agency operator's agreement" with Avis Rent-A-Car System, Inc. ("Avis") to run the Bellevue Airport Avis Concession. (Wallace Decl Ex. 1 at 1, 6.) The essence of the agreement established that Avis supplied cars, insurance, gas, repair, and advertising, while plaintiff otherwise managed the business. *(Id* at 1-3.) Plaintiff was to collect customer rental payments, hold them in trust for Avis, and transmit this money regularly to Avis. (*Id* at 1-3.) Avis was to compensate plaintiff for these services by paying ten percent of all ""paid [rental] time and/or milage charges." *(Id* at 3.) In 1997, Avis informed plaintiff that the parties were mutually amending the agreement to include a "fleet surcharge." *(Id.* at 7.) The "fleet surcharge" reduced the commissions by twenty cents per vehicle for each day the vehicle was assigned to plaintiffs location, regardless of whether the vehicle was rented. *(Id)* The "agency operator's agreement" explicitly states that it is not granting franchise rights, going so far as to contract that the plaintiff waives any and all rights under franchise law should a court rule that the business is a franchise. *(Id.* at 4.)

Under the terms of the agreement, the contract (which has no specific time limit) can be terminated by either party on thirty (30) days notice. *(Id* at 4.) By letter dated September 16, 2002, Avis

informed Plaintiff that it intended to terminate the agreement on October 31, 2002. (*Id* at Ex. 2) That date was later extended to November 30, 2002. (Bundy Decl. in Supp. of Prelim. Inj. Ex A).

*2 Plaintiff moved for a preliminary injunction in state court, claiming that the agreement between the parties had formed a franchise, and that the termination of the relationship was. in violation of the Washington Franchise Investment Protection. Act ("FIPA"). Defendant removed the case just prior to the preliminary injunction hearing. The motion was nevertheless heard by this Court, Honorable Thomas Zilly presiding. Judge Zilly assumed that the agreement had created a franchise, yet denied the motion for preliminary injunction based on no substantial likelihood of success on the merits of showing that a violation of FIPA had occurred, and no showing of irreparable harm.

The parties have now filed cross motions for summary judgment, Plaintiffs motion simply asks the Court to .find that arrangement between the parties constituted a franchise. Defendant disputes this contention based on argument that Plaintiff never paid a "franchise fee" to defendant. Defendant also argues that plaintiff Gwennyth Morrison was not an employee of Avis. Finally Defendant argues that even if the Court finds that a franchise was created, that no violation of FIPA occurred.

ANALYSIS

This matter is before the Court on cross motions for summary judgment Summary judgment is not warranted if a material issue of fact exists for trial. *Warren* v. *City of Carlsbad,* 58 F.3d 439, 441

(9th Cir. 1995), *cert, denied,* 516 U.S. 1171 (1996). The underlying facts are viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). "Summary judgment will not lie if ... the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party moving for summary judgment has the burden to show initially die absence of a genuine issue concerning any material fact *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 159 (1970). However, once the moving party has met its initial burden, the burden shifts to the nonmoving party to establish the existence of an issue of fact regarding an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Cebtex Corp.* v. *Catrett*, 477 U.S. 317, 323-24 (1986). To discharge this burden, the nonmoving party cannot. rely on its pleadings, but instead must have evidence showing that there is a genuine issue for trial. *Id* at 324.

A. *The Washington Franchise Investment Protection Act ("FIPA")*

Under FIPA, there are three basic statutory elements to a "Franchise." RCW 19.100.010(a) defines a franchise as: *3 An agreement, express or implied, oral or written, by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee. The parties dispute only the third element whether or not Plaintiff paid a "franchise fee." The statute also defines "franchise fee" as follows:

"Franchise fee" means any fee or charge that a franchisee or sub franchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges. RCW 190.100.010(f)(I2). The statutory definition suggests that a franchise fee includes "fees hidden in the franchisor's charges for goods or services." *Corp.* v. *ARCO*, 45 Wash. App. 563, 567 (1986.) The provision also excludes a number of different payments from the definition of a franchise, but none of the exceptions applies in this matter:

the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by

the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance-reflects only a bona fide wholesale transaction; (e) the purchase or lease of agreement to. purchase or lease supplies or fixtures necessary to enter in to the business or to continue the business under the franchise agreement, at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps, to be used as incentives only and not to be used in, with, or for the sale of any goods. *4RCW I90.I00.010(f)(12).

Washington courts have recognized that a "franchise fee" may be indirect, including fees that are "hidden" in a principle's fees for goods or services. For example, a franchise existed where a principle admitted that initial charges to the agent included cost recovery for training and marketing costs. Lobdell v. Sugar W. Spice, Inc., 33 Wash. App.881, 891-92, 658 P.2d 1267 (1983). Similarly, a franchise was found where the franchisor charged the franchisee "rent" for use of the premises based on a percentage of gross revenues rather than any estimation of fair market value of the premises. Corp. v. Atlantic-Richfield Company 45 Wash. App. 563, 569, 726 P.2d 66 (1986). See also Blanton v. Mobil Oil Corp, 721 F .2d 1207, 1220 (9th Cir. 1983)

(mandatory purchases of motor oil and other products constituted franchise fee). However, a franchise fee was not found where the purported franchise agreement allowed for a fixed rate to be paid to the agent, white a markup was retained by the principle. Corporate Resources, Inc v.. Eagle Hardware & Garden, Inc., 115 Wash. -App. 343, 350,62 P.3d 544 (2003).

Once a franchise is formed, whether intentionally or not, FIPA sets forth certain protections for franchisees. To that end, the statute provides for compensation upon a. failure to renew the franchise agreement, with an obvious eye toward protecting the franchisee from loss of capital outlay Specifically, it is unlawful for a franchisor to: (i) refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory supplies, equipment and furnishings not reasonably required in the conduct of the franchise business: PROVIDED, That compensation need not be made to a franchisee for good will if (i) the franchisee has been given one year's notice of nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor:

PROVIDED FURTHER, That a franchisor may offset against amounts owed to a franchisee under this subsection any amount owed by such franchisee to the franchisor.

(j) Terminate a franchise prior to the expiration of its

term except for good cause. Good cause shall include... RCW 19.100.180(i) and(i).

B . Application to the Present Case

1. *"Franchise fee"*

Defendant first moves for summary judgment under FIPA by arguing that the agreement between the parties did not constitute a franchise because there was no "franchise fee." The other two elements of the franchise test are not contested. Plaintiffs bring a cross motion on the same issue, asserting that both the 10% commission and "fleet surcharge" are fees paid for the right to enter into a business or to continue a business. For the reasons set forth below, neither the commissions arrangement nor the "fleet surcharge" constitutes a franchise fee.

*5 FIPA was enacted to "deal with sales abuses and unfair practices in the franchising of goods and services." *Corp,* v. *Atlantic-Richfield Co.,* 122 Wash. -2d 574,. 579,-860 P.2d If) 15 (1993). In Particular,the Act was -.designed to protect the Investment of the franchisee who "suffer[s] a lack -of material information before purchasing their franchise and of bargaining power after purchasing *Lobdell,* 33 Wash App. at 888. In furtherance of these goals courts have consistently construed;, agreements, not labeled franchise agreements but leases or partnerships to be franchises if the substance, of the agreement meets the statutory requirements. *See Corp,* v. *ARCO,* 45 Wash. App. 563, 569 (1986); *Huebner* v. *Sales Promotion, Inc.,* 38 Wash. App. 6669 (1984)

Here, the Court finds that the commission-based compensation agreement, by itself, does not constitute a franchise. Money that was collected by the plaintiff corporation was forwarded on to Avis. Ten percent of that gross amount was then paid to Morrison, Inc. as compensation. This arrangement does not involve payment of a franchise fee. No money was ever paid to Avis from Morrison, Inc. Morrison's argument that it paid a franchise fee in the form of the ninety percent of sales retained by Avis is without merit. Such an interpretation would convert every commissioned sales person in a clothing store into a franchise where none of the concerns FIPA was intended to address are in play. (Cite as; 2003 WL23119903 (WD.Wash.))

By the statutory terms, the agreement does not entail an "initial capital investment" fee, nor does it require the payment of a "charge*1 on gross or net sales. Morrison is not required to "purchase" goods or services from Avis, nor has Morrison claimed that it was required to pay for training. Nor is there any other payment made, hidden or otherwise, that could constitute a franchise fee by any other definition.

Nor does the "fleet surcharge" constitute a franchise fee. This is so because the "fleet surcharge is not an amount *paid to* the principle in order to continue to do business. Using the examples given in the statute, the surcharge is not a "capital investment fee," a "percentage of gross or net" sales," payment for the mandatory purchase of services, or training fees. Because the surcharge cannot be categorized as one of the described fees under the statute, the Court must decide whether the surcharge is otherwise an amount paid to the

principle in order to continue to do business. In making this determination, the Court finds persuasive the wealth of authority provided by defendant supporting the proposition that courts should be guided by whether an unrecoverable investment has been made on the part of the alleged franchisee in analyzing operating agreements.

Often, only the franchise fee will separate the legitimate franchise from the common everyday commissioned sales agent.

*6 First, the surcharge in this case is not a charge for the mandatory purchase of services or payment for goods or services available only from the franchisor. (FN1] The policy behind making such a payment constitute a franchise fee is to include hidden fees in the definition. *See Corp.* v. *ARCO,* 45 Wash. App. 563, 569 (1986). Hidden fees occur, for example, when a franchisor requires a franchisee to purchase services only from the franchisor, and at an above market price. The franchise fee is therefore hidden within the price of the services. In the present case, there is not even an argument that twenty cents a day is the price for which a franchisee may rent a car from the franchisor, and certainly there is no argument that this is an above market charge. In no way can this surcharge be said to be a payment for services.

> FN 1. The "mandatory purchase of services" is the only example listed in the statute that is even arguably applicable to the "fleet surcharge."

Next, the Court declines to hold that the twenty-cents-a-day surcharge is otherwise an amount paid

in order to continue doing business. The primary purpose of this legislation was to protect franchisees from losing money invested in found this to be critical in making a determination regarding presence of a franchise fee. *Corporate Resources, Inc.* v. *Eagle Hardware & Garden, Inc.,* 115 Wash. App. 343, 350 62 P.3d 544 (2003) (contractor for hardware store was not a franchise where there was no "unrecoverable investment"). The same reasoning applies here. So far as the record reflects, plaintiffs have not made any financial capital investment in Avis. They vaguely point to "good will" as an example of an unrecoverable investment that should be compensated. Yet all- agents, bring with them a certain amount of good will to their principle, and do not expect to be independently compensated for that good will.

Finally, this is not an amount that is paid *by the franchisee.* Rather, the fleet surcharge is simply one factor in the determination of the commission to be paid to the agent. There is no evidence that the agent would be required to actually pay money to Avis if commissions were zero or so low that the fleet surcharge nullified them. The surcharge addendum simply indicates that the surcharge would be applied to any "commissions payable,"

C. *NoEmployer-Employee Relationship*

Defendant also moves for summary judgment on the issue of whether, in the alternative, the relationship constituted an "employer-employee" relationship between Avis and individual plaintiff Gwennyth Morrison. The amended complaint asserts, without stating a statutory or common law basis for relief,

that if no franchise exists, "then Gwennyth Morrison was simply acting as an Avis employee ... and is entitled to all the compensation she would have received had she remained an Avis employee." Compl. at 4.

*7 By its motion, Avis puts forth a prima facie case that the relationship was not one of employer-employee. The agreement that was signed was between Jon IC Morrison, Inc. and Avis. Morrison, Inc. received 1099 tax forms each year from Avis. Morrison, Inc. is referenced in the agreement as having its own employees, not as being an employee of Avis. Nothing .in plaintiffs' opposition to this argument gives rise to any issue of material fact that would preclude summary judgment. Plaintiffs simply seem to be arguing that if no franchise exists, then an employment relationship *must*. Yet there is no authority for this position. In any case, plaintiffs agree that Ms. Morrison was not an employee of Avis.

D. *No "Diversion of Business"*

Again, plaintiff has apparently stated an ambiguous alleged wrong without defining a legal theory upon which relief might be granted. Paragraph 19 of the amended complaint alleges that Avis diverted business from its Bellevue location during the summer of 2001. It is unclear what plaintiffs want by this allegation. In any case, defendant has moved for summary judgment on the issue of diversion of business, which it interprets as either a contract violation or an extra-contractual cause of action. Plaintiffs have not defended this portion of

defendant's motion, not even caring to mention whether this was in fact a cause of action it wished to pursue. The Court therefore grants summary judgment in favor of defendant

CONCLUSION

Based on the foregoing analysis, the Court finds that summary judgment is warranted on each of plaintiffs* claims. The Court holds that the agreement between the parties did not constitute a franchise as defined by the Franchise Investment Protection Act, RCW 19.100, because plaintiffs never paid a "franchise fee" to the defendant. Further, individual plaintiff Gwennyth Morrison was not an employee of Avis during the relevant time period. Finally, plain tiffs claim for "diversion of business" has no merit. Summary judgment granted on all claims in favor of defendant

The Clerk is directed to send copies of this order to all counsel of record.

Dated: November _____, 2003.

/s/ Marsha J. Pechman, Marsha J. Pechman, United States District Judge

END OF DOCUMENT

EXHIBIT 8

IN THE ARBITRATION PROCEEDINGS BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

THOMAS W. BISHOP, STEVEN E. HAMANT, and TIMOTHY E. SCANLON, Claimants,

v. Case No. 05-04391

RAYMOND JAMES FINANCIAL SERVICES, INC., Respondent.

CLAIMANT THOMAS W. BISHOP'S RESPONSE IN OPPOSITION TO RESPONDENT RAYMOND JAMES FINANCIAL SERVICES, INC.'S MOTION TO DISMISS

Claimant, Thomas W. Bishop, by counsel, for himself only, responds in opposition to respondent's ("RJFS") motion to dismiss.

Thomas W. Bishop ("Bishop") reaffirms his reliance upon the authorities cited in his statement of claims. Claimant Bishop is represented by Jay J. Levit Esquire. Claimants Hamant and Scanlon are now represented by Scott G. Crowley, Esquire.

The motion to dismiss should be denied because its central premise is that all of the matters alleged in the statement of claims are totally governed by Virginia law. Indeed, at page 16 of the motion to dismiss, RJFS goes so far as to say that

"under Virginia law, no private cause of action exists for violation of NASD rules." Presumably this means that the NASD has no function in the securities industry' as a regulatory body. Everyone knows this is not true and the proposition submitted by RJFS that Virginia state law exclusively governs the matters set forth in the statement of claims has no applications an arbitration proceeding conducted under NASD rules. The purpose in taking such an obviously untenable position, is for RJFS to avoid under the facts alleged in the statement of claims the application of a core principle flowing from the federal legislation underlying the securities industry, i.e.,**the core principle of just and equitable principles of trade.** And, in this connection, and for this reason, the arbitration panel should treat the allegations in the statement of claims as being true for purposes of deciding RJFS' motion to dismiss.

A search on the internet under the NASD site on January 19, 2006 for information on "just and equitable principles of trade" elicited information that included advice that this principle was found in 10,377 documents. These documents range from complaints, to rules changes, to regulations, and to decisions, among other things, so that there is little doubt that principle of "just and equitable principles of trade" is woven deeply into the fabric of an arbitration proceeding conducted under NASD rules. Yet at page 16 of its motion to dismiss, RJFS simply dismisses this core principle on the basis that under Virginia law no private cause of action exists for violation of NASD rules. So the message to the arbitration panel is to throw the NASD rules out the window, and the message from virtually everyone

else is that the principle of just and equitable of principles of trade is a core NASD value.

Thus, in the proceeding Before the National Adjudicatory Council, NASD Regulation, Inc., Complaint No. CAF 980029 (June 2,2000, Department of Enforcement Complainant v. Aleksandr Shvarts, Respondent some of the following general principles are enunciated:

(1) That NASD "rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest."

(2) That NASD Conduct Rule 2110 requires adherence to "high standards of commercial honor and just and equitable principles of trade", including matters of a "member's failure to live up to obligations owed to a customer or to a fellow member."

(3) Dishonorable and inequitable conduct can be viewed as inconsistent with just and equitable principles of trade. Samuel B. Franklin & Co., 38 S.E.C. 113, 116(1957).

(4) "The special focus of the NASD's Rules is the professionalization of the securities industry, and the rules are affirmatively and vaguely phrased in terms of what shall be instead of in terms of concrete proscriptions. Gufston v. Strangis, 572 F.Supp. 1154,1158 (D.Minn. 1983). Conduct Rule 2110 is not limited to rules of legal conduct but rather ... it states a broad ethical principle." Cf. Timothy L. Burkes. 51 S.E.C. 356 (1993), aff'd mem.. Burkes v. SEC. 29 F.3d 630 (9th Cir., July 24, 1994).

(5) The NASD has authority to impose sanctions for violations of "moral standards" even if

there was no "unlawful" conduct **Benjamin Werner,** 44 S.E.C. 622 (1971). (Conduct Rule 2110 was formerly known as Article 3, Section 1 of the NASD Rules of Fair Practice.)

In its tunnel vision approach, totally blind to the core values constituting the underpinning of NASD arbitration procedures, RJFS' motion to dismiss simply argues under its view of Virginia law that claimants were "at-will" employees, and that the panel can simply stop there and not be concerned with the factual allegations in the statement of claims. This makes no sense, particularly when one looks to the form of the FA contracts utilized by RJFS. These contracts are titled "Raymond James Financial Services, Inc. FA Agreement" and have been submitted with RJFS' answer to the statement of claims. In paragraph 12 of these form contracts, entitled "Observance of Regulatory Requirements", it is stated in pertinent part that "Due to the unique nature of the securities brokerage business, the activities contemplated under this [RJFS] Agreement are controlled by laws, both federal and state, or rules, regulations and interpretations under the Regulatory Authorities." Under paragraph 1(e) of the RJFS form agreement, it is stated in pertinent part that "The term Regulatory Authorities' shall mean the United States Securities and Exchange Commission ("SEC"), the National Association of Securities Dealers, Inc. ("NASD")... " In light of this, it is an enigma as to how RJFS can posit to the arbitration panel that so-called Virginia law ousts the NASD of its core values and its rules in the securities industry. It is argument of counsel on behalf of RJFS, inconsistent with the basic concept underlying the NASD, and inconsistent with the

language in basic form agreements drafted and published by RJFS itself.

The allegations in the statement of claims on behalf of Mr. Bishop are serious allegations and certainly invoke important questions of just and equitable principles of trade. These are questions that should be addressed through the production of evidence, and there is substantial evidence to be produced. Discovery is still ongoing. But to illustrate the difficulties that are involved, one need only to look at the current posturing by RJFS within the context of the factual allegations in the statement of claims.

In response Bishop's information requests, RJFS states that it abruptly dropped its legal representation of Bishop when its then and current employee, Finnie, "received an e-mail **confirming** that his password had been changed." RJFS then goes on to say that "with the assistance of the FBI, it was determined that the computer used to access Mr. Finnie's information was located at the Claimant's address." But in its motion to dismiss, RJFS states that Finnie "received an automated e-mail message that his password had been changed," with no mention of any "confirmation". The motion goes on to state that "Based on an internal investigation, RJFS management concluded that the password change originated from a computer in Bishop's office [not address] and that Bishop **or one of his colleagues"** did all of the wrongdoings with Finnie's password. It was because of all of this that RJFS and its legal counsel simply abandoned Bishop, without telling him why, and is now raising it for the **first time** in this proceeding. But in its response to Bishop's information request, RJFS

states that it determined that the wrongdoing occurred at the claimant's address, and RJFS so determined "With the assistance of the FBI." No such assistance is mentioned by RJFS in this connection in the motion to dismiss (see page 4 thereof).

In addition, although RJFS repeatedly states that Bishop did the wrongdoing with Finnie's password and wrongful computer access, and flaunts the name of the FBI, in response to Bishop's information requests, RJFS states the following. Has RJFS taken any action against RJFS or anyone else with respect to this alleged wrongdoing put into the hands of the FBI by RJFS. RJFS's answer is the only action it has taken is the counterclaim it has filed in this proceeding. (See response 10) In its response to request 11, RJFS concedes that the FBI confirmed that Bishop **or one of his colleagues** had illegally accessed Mr. Finnie's computer. RJFS goes onto say that "the FBI has determined, for the time being, not to bring any criminal charges." Mr. Bishop denies any wrongdoing, and he has **a** clear record with the NASD. RJFS has made some serious accusations, and it is time for RJFS to put its cards on the table, or to fold them - - one or the other. This is serious business, and to use an NASD proceeding to make reckless charges without support is truly a matter falling under the core value of "just and equitable principles of trade."

All of these things have to be presented at a hearing before this arbitration panel, and they should not be swept under the rug by a motion to dismiss based on "Virginia law."

This is not to say that RJFS' interpretation of Virginia law is sound. It is not. Its argument that

Bishop's claims are barred by the statute of limitations for fraud, overlook the fact that substantially his claims go to breach of contract, and that as framed in the statement of claims this breach is not based upon primary estoppel. If the cases cited by Bishop are read carefully, and the facts alleged in the statement of claims are read carefully, it will be seen that the contract breaches are based upon Bishop's having performed his side of the bargain, not simply upon his reliance on a representation, but based upon his reliance on RJFS' representations, and Bishop's subsequent and responsive contractual performance. RJFS misses this point.

RJFS takes the position that Bishop has alleged damage to his reputation and career, but not damage to his business. In the securities industry, it is difficult for one to separate loss of reputation from damage to one's business, certainly under just and equitable principles of trade. There is a suggestion by RJFS that it cannot conspire with itself, and Bishop has not alleged the involvement of a third party, whatever that means. In any event, in Worrie v. Boze. 19 8 Va 533, 540,95 S.E.2d 192 (1956), the Virginia Supreme Court announced its rule that in a conspiracy, one such as RJFS can be held liable for conspiring to breach its own contract, and this is in reference to RJFS' agreement to settle with Gary Stewart of National Securities, and then dumping Bishop even though the lawyer for RJFS was in the midst of representing Bishop as well. This is a serious matter under just and equitable principles of trade, and must be aired before this panel. It cannot be swept under the rug. It is unheard of, ethically, for legal representation to have been so abruptly dropped in mid-stream while at the same time the lawyer settled for one client (RJFS), and then dropped another (Bishop). Now we are told for the first time in this proceeding that it has something to

do with the FBI, except that the FBI has never spoken to Bishop and admittedly is taking action against no one. And admittedly, RJFS has taken no action against Bishop or anyone else other than its belated counterclaim in this proceeding.

RJFS repeatedly states that the claimant resigned. This is less than a candid shot at Bishop, because RJFS knows very well that Bishop had no choice but to resign. He would be dismissed by RJFS if he did not resign, the dismissal would be unjust, but nevertheless it would be a dismissal that Bishop would have on his record and might have to report to others if asked. He had to resign in order to stop the bleeding or at least lessen the extensive damage that he had already sustained. The evidence will show that Bishop had established a profitable, well working office for RJFS, and that it was closed down by RJFS in order to escape a suit against it by Gary Stewart of rival National Securities. The evidence will show that initially RJFS fully supported and defended Bishop both orally and in writing, but when settlement time started to approach, RJFS abandoned Bishop, closed the office, gave conflicting reasons for its actions, and subsequently came up with its latest FBI theory in this proceeding. Bishop suffered a significant business loss. When that profitable office that he had established for RJFS had closed down, he had to start over again, and all the work and relationships that he had made initially, to a significant extent were lost and wasted. This is damage not only to reputation but damage to one's legitimate business expectations. And this damage is ongoing.

For the foregoing reasons, the motion to dismiss should be denied, and all claims should be heard before this panel and resolved on their merits, because the underlying public policies are too important.

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By. /s/
Counsel
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CERTIFICATE

I certify that on February 24, 2006, I sent via Federal Express overnight delivery true copies of the foregoing to the following:

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By. /s/
Jay J. Levit

EXHIBIT 9

IN ARBITRATION PROCEEDINGS BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

THOMAS W. BISHOP, STEVEN E. HAMANT and TIMOTHY E. SCANLON,
Claimants,

v.

Case No. 05-04391

RAYMOND JAMES FINANCIAL SERVICES, INC.,
Respondent,

MEMORANDUM OF CLAIMANTS HAMANT AND SCANLON IN OPPOSITION TO RESPONDENT' S MOTION TO DISMISS

The claimants Steven E. Hamant ("Hamant") and Timothy E. Scanlon ("Scanlon"), by counsel, submit the following memorandum in opposition to the motion to dismiss filed by the respondent Raymond James Financial Services, Inc. ("RJFS").

INTRODUCTION

Claimants Hamant and Scanlon[1], Former Financial Advisors employed by RJFS in Branch 6711 in Richmond, Virginia, commenced this arbitration proceeding RJFS alleging *inter alia,* (1)

[1] The initial Statement of Claims was filed by Jay J. Levit, Esq., on behalf of all three claimants. Nonetheless, by letter dated January 26, 2006, the NASD Dispute Resolution and counsel of record were advised that claimants Hamant and Scanlon had retained the undersigned counsel to represent them in these arbitration proceedings.

wrongful discharge, (2) breach of the Financial Advisor Agreement, (3) tortuous interference with contract, (4) common law and statutory conspiracy, (5) violation of the Virginia Retail Franchising Act, and (6) violation of just and equitable principles of trade.

These essence of Hamant's and Scanlon's claim is that RJFS's dismissal of their employment was wrongful in that respondent succumbed to false, malicious and unsubstantiated allegations made against them by former colleagues whose motive was to eliminate them as competitors. By operation of law, the Financial Advisor Agreement requires that the broker/dealer have just cause to dismiss an advisor. RJFS' own general counsel admitted in a tape-recorded telephone call that it had no just cause to terminate claimants' employment. Further, RJFS officers took affirmative steps to prevent claimants from being hired by other Raymond James branches in the area. Accordingly, RJFS is liable for breaching the Financial Advisor Agreement. As a result of the discharge, Hamant and Scanlon have lost several of their accounts, costing them tens of thousand dollars in lost commissions.

COUNTER-STATEMENT OF FACTS

1. On March 8, 2001 Hamant and Scanlon entered into Financial Advisor Agreements with RJFS, which are appended to respondent's memorandum in support of its motion to dismiss

2. In addition to the provision of the FA Agreement that respondent purports to entail at-will employment, paragraph 15(c) the Agreement states:

> The parties reserve the rights they may have to seek indemnification or contribution under

> this section pending final resolution of the action, suit, proceeding, demand, claim or assessment to which this section may apply.

Resolution of each party's responsibility under this section shall if not mutually agreed upon be determined by arbitration before the NASD.

3. In addition to the aforementioned provision, a memorandum enunciating RJFS's "Business Ethics Policy" issued in December of 2000, sets forth the following under the heading Arbitration Agreement:

> In the event of any controversy between FA and the Company arising out of the independent contractor relationship, including such matters as compensation, termination, all statutory discriminatory claims (e.g.; age race, gender, sexual harassment, national origin, religion, and disability) or ERISA, both parties agree such matter shall be determined exclusively by arbitration before the National Association of Securities Dealers (NASD) in accordance with the NASD rules then in effect. FA understands and acknowledges that consent to this provision constitutes a waiver of certain rights, including the right to a jury trial, which might otherwise be available in the absence of an arbitration agreement.

(Emphasis added).

4. The RJFS Compliance Manual expresses repeatedly that the appropriate response to "behavioral problems" and "third party complaints"

of or against branch managers and financial advisors are monitoring by the compliance department and placement under "heightened supervision." A section of the Compliance Manual regarding "Supervision of Branch Manager," revised April 13, 2004, and attached to this memorandum, sets forth the following processes of monitoring, heightened supervision and other forms of progressive discipline:

Compliance Department Monitoring

Each member of the Compliance Department, Executive and Sales Management areas, will be responsible for alerting the Senior Compliance Specialist in charge of Branch Manager Supervision of any potential or realized problems relating to one or more Branch Managers. This includes, but is not limited to, problems perceived during review of exception reports, audit visits, or during review of the Branch Manager's "MARS" report, the High Commissions report, the Active Trading report, behavioral patterns. Issuing should be summarized in written form. Once again, the nature of the issue will serve to determine if the Branch Manager will be placed under heightened supervision.

Customer/Third Party Complaints

Any Branch Manager identified as the subject of a serious, non-frivolous customer complaint shall be placed on a supervisory watch list for a period of not less than one year. For additional information refer to the

"Customer/Third Party Complaints" section of this manual.

Supervisory Problems

If a financial advisor of the firm is cited and/or disciplined for serious violations of company, industry or government standards or regulations; then the Branch Manager responsible for supervising that financial advisor may be placed under heightened supervision for a period of not less than six months in order to ensure appropriate levels of supervision.

In addition to the foregoing explanations, the Compliance Manual states that the "Branch Manager will be notified of placement on Heightened Supervision," RJFS may call the branch manager "in order to elicit explanations and discuss solutions," that a "log will be maintained noting date, time, manager, topics discussed, and resolutions reached."

5. At no time were the claimants placed on heightened supervision, informed that the aforementioned third party complaints received were deemed anything other than frivolous, non-material allegations made by former colleagues in bad faith. Nor were any of the other procedures invoked to monitor the office or elicit explanations from either Bishop, Hamant or Scanlon. In short, claimants were never notified that RJFS had concerns about the way Branch 67H was operated, and were never given an opportunity to explain themselves or afforded a chance to remedy the situation.

6. During the course of the year 2003, RJFS received four complaints against Hamant, Scanlon and/or branch manger Bishop by former colleagues.

Without repeating the history of those complaints here, those complaints were shown to be false and malicious, and claimants were vindicated in arbitration of those complaints. Inexplicably, in April of 2004, in course of course of defending claimants against the false charges RJFS terminated claimants' contracts. RJFS also settled the complaints and left claimants to fend, for themselves, severely prejudicing their respective positions in the pending arbitration. Nonetheless, the subsequent arbitration award largely vindicated the claimants. Of note, the claimants did not experience any customer complaints.

7. By e-mail correspondence on April 27, 2004, Scott Whitley, 1st Vice President of RJFS's Investment Management Division, claimants were notified that it was "terminating your registration with RJFS, effective with the close of business, five days from today." Although the message stated that the action was taken "largely due to the series of complaints which have occurred in your office/' Whitley did not give any reason other than the complaints that contributed to the decision to terminate.

8. In a tape-recorded telephone call between claimants and Terrance A. Bostic, Esq., Vice President and Associate Corporate Counsel for RJFS that occurred immediately after receipt of the foregoing e-mailed notice, Mr. Bostic acknowledged that RJFS did not have just cause to terminate claimants. He indicated that the decision was not a "legal decision" or a "compliance decision" meaning that it was not compelled by any law or regulation, or caused by any misconduct on the part of the claimants. Rather, Mr. Bostic emphasized that the

termination was simply a "sales management decision," or in other words, it was merely a business decision.

9. Notwithstanding the respondent's claim that it was incurring attorney's fees in defending the claimants against the aforementioned complaints, the claimants were reimbursing RJFS through payroll deductions. Thus, RJFS was not suffering any losses as a result of the complaints lodged against claimants.

10. Despite RJFS's claim to the contrary, the complaints against members of Branch 67H did not cause "internal turmoil" inasmuch as the members withstood the false allegations together. Nor did the complaints require "an unusual amount of involvement of RJFS management" since the branch was never monitored or placed on heightened supervision.

11. Unlike customer complaints, third-party complaints from other stockbrokers, including former colleagues, are rarely deemed serious in the securities industry and virtually never form the basis for terminating a branch's registration. Terminating the registration status of Hamant and Scanlon. In this circumstanced constituted an overreaction to immaterial and unsubstantiated complaints. Such complaints do not arise to the level of just cause for dismissal.

12. Following closure of the branch office, Hamant and Scanlon applied for employment at other branches of RJFS in the Richmond area. Despite the willingness of these managers to hire them, RJFS pressured the managers not to. That pressure constitutes the basis for Hamant's and

Scanlon's tortious interference with business expectancy claim.

ARGUMENT I

BY MANDATING ARBITRATION OF DISPUTES ARISING UNDER THE EMPLOYMENT, AGREEMENT, FEDERAL LAW DICTATES THAT THE NATURE OF THE RELATIONSHIP IS ALTERED FROM AN AT-WILL ARRANGEMENT TO ONE WHERE "JUST CAUSE" IS REQUIRED TO JUSTIFY A TERMINATION OF A SECURITIES ADVISOR.

The reliance o RJFS on the Virginia at-will employment doctrine is completely misplaced. First, Virginia law is inapplicable pursuant to paragraph 18 of the FA Agreement, which clearly states that "the terms of this Agreement shall be construedpursuant to the laws of the State of Florida and in accordance with the requirements of the Regulatory Authority to die extent applicable." The "Regulatory Authority" governing security industry arbitrations is the NASD, the decisions of which are supported by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et.seq.

The federal courts interpreting the FAA have consistently held that arbitrators may award money for wrongful termination of financial advisors (e.g. without just cause), even if the claim would be subject to dismissal in state court under the at-will employment doctrine.

For example, in Paine Webber, Inc. v. Agron 49 F.3d 347 (8th Cir. 1995), the U.S. Court of Appeals for the Eighth Circuit held that mandatory

predispute arbitration agreements about employee discharges imply a requirement that discharges may only be for "just cause" or "discernible cause." In that case, the court refused a broker/dealer's request to upset an arbitration award to a former financial advisor who suffered damages as the result of a wrongful discharge. The court's analysis is exactly applicable to the present case.

> Paine Webber also contends that the award must be vacated because it manifestly disregarded Kansas' employment-at-will doctrine. This argument overlooks the very nature of this arbitration proceeding. Even accepting that Kansas is an employment-at-will state, and further assuming that we would be willing to apply a manifest disregard analysis, PaineWebber' s relationship with Agron under the oversight of the NASD contemplated the use of the arbitration procedure as a means of settling employment-related dispute This process necessarily alters the employment relationship From at-will to something else - some standard of discernable cause inherently required in this context where an arbitration panel is called On to interpret the employment relationship. *See Shearson Hayden Stone, Inc. v. Liang,* 653 F,2d 310, 312-13 (7th Cir. 1981); *see also Truck Drivers Local 705 v. Schneider Tank Lines,* 958 F.2d 171, 175 (7th Cir. 1992)(arbitration clause implies just cause requirement); *Smith v. Kerrville Bus. Co.,* 709 F.2d 914, 917-18 (5th Cir. 1983) (arbitrators typically infer just cause requirement from arbitration procedure). If Agron's employment was purely

> at-will, the arbitration procedure designed to interpret that employment relationship would serve no identifiable purpose. Accordingly, the arbitration panel had the power to determine whether the firing was justified. PaineWebber has not shown that the arbitrators' power was expressly limited to application of the Kansas at-will doctrine by the terms of the employment agreement, promissory note, or any other factor. Rather, PaineWebber merely contends that the panel's disposition improperly disregarded Kansas law. Accordingly, we are powerless upset the award.

49 F.3dat352.

The same analysis was employed, and the same conclusion was reached, by die U.S. Court of Appeals for the Seventh Circuit in Shearson Hayden Stone. Inc. v. Liang, 653 F.2d 310 (7lh Cir. 1981), another case in which a broker/dealer asked a federal court to upset an arbitration panel's decision awarding damages to a financial advisor wrongfully discharged. That court stated:

Shearson's further reply that Liang's employment was terminable at will is without merit It has been held repeatedly that an agreement to arbitrate disputes about employee discharges implies a requirement that discharges be only for "just cause." *See, e.g., Int'l Ass 'n of Machinists v. Campbell Soup Co.,* 406 F.2d 1223,1226-27 (7th Cir.), *cert denied,* 396 U.S. 820, 90 S.Ct 57, 24 L.Ed.2d 70 (1969). Since the arbitrators had power under the contract to make that determination, their award

must be upheld. *Amoco Oil Co. v. Oil, Chemical & Atomic Workers Int'l Union*, 548 F.2d 1288, 1294 (7th Cir.), *cert,* denied, 431 U.S. 905, 97 S.Ct. 1697, 52 L.Ed.2d 389 (1977).

The principle enunciated in these securities industry employment cases is that where there is an employment relationship between a securities industry representative and a brokerage firm under which the NASD mandates the use of arbitration for settling employment-related disputes, the employment relationship is altered from an at-will relationship to one where either "just cause" or "discernable cause" is required to justify firing an employee.

Accordingly, the arbitrators empanelled to hear this case are empowered to determine whether a firing was justified, and award damages if it was not. Accordingly, Hamant and Scanlon are legally able to challenge and obtain compensation for unfair and arbitrary terminations.

The terminations of Hamant and Scanlon in the present case were clearly arbitrary, and without just cause, considering that:

(1) RJFS officials were motivated not by any substantiated wrongdoing on the part of claimants, but by panic and anxiety caused by a series of unfounded, malicious third-party complaints from former colleagues who were themselves motivated by improper aims to eliminate claimants from competition.

(2) According to common practice in the securities industry, third-party complaints are typically deemed immaterial and inconsequential, and rarely constitute a

basis for terminating a branch's registration with the broker/dealer.

(3)Neither the manager of branch 67H, or Hamant or Scanlon were ever notified that the third-party complaints were causing anxiety on the part of RJFS managers at company headquarters. Nor was the branch placed on heightened supervision or any other form of monitoring to let the branch members know that headquarters believed that the employed were experiencing behavioral problems.

(4) The third-party complaints posed no out-of-pocket costs to RJFS, inasmuch as claimants had to reimburse the company for the legal expenses incurred. In the case of Hamant, he paid the $10,000 arbitration award issued against him out of his funds.

(5) Claimant Scanlon had no customer complaints against him in the course of his 14-year career as a financial advisor, and Hamant had just one modest complaint against him in 1998 that was retracted in his 12-year career.

The extent of RJFS's bad faith in terminating Hamant and Scanlon is manifested by its tortious interference with their ability to secure alternative employment with other another Raymond James branch offices in the Richmond, Virginia area.

II

RESPONDENT'S OTHER DEFENSES ARE EQUALLY MISPLACED

A. Tortious interference with contract. RJFS argues that the claimants' tortuous interference claim must be dismissed because they "have not alleged that RJFS interfered with a contractual relationship or business expectancy with a third person." To the contrary, however. Hamant and Scanlon allege that RJFS officials pressured managers of other Raymond James branches to not hire them, despite the managers' willingness to do so. Thus, claimants do not allege that RJFS interfered with its own contract, but with a separate and distinct business expectancy of Hamant and Scanlon.

B. Common law and statutory conspiracy to injure trade, business or profession.

Without citing any authority, RJFS would have this panel believe that a significant diminishing of the claimants' book of business and commission compensation, does not constitute a "business-related damage." Respondent's motion to dismiss must be denied in this regard.

C. Virginia Retail Franchising Act. RJFS is somehow under the impression that claimants are not required to pay it "directly or indirectly, a franchise fee of $500 or more," thereby rendering their claim defective. What RJFS fails to acknowledge, however, is that financial advisors of Raymond James must pay it $150 per month for the privilege of holding themselves out the public as RJFS advisors, as well as an override of 10% of their

earnings. Accordingly, as in other claims of securities advisors alleging violations of the Act because of terminations, the definition of "franchise" is satisfied.

CONCLUSION

For the foregoing reasons, the respondent's motion to dismiss should be dismissed in its entirety, and the claims permitted to proceed to a full hearing before the panel of arbitrators to be decided on the merits.

Respectfully submitted,

STEVEN E. HAMANT
TIMOTHY E. SCANLON

/s/
By_____

Scott Gregory Crowley (VSB #31216)
CROWLEY & CROWLEY
Forest Plaza One
7201 Glen Forest Drive, Suite 106
Richmond, VA 23226
(804) 282-5303
(804) 282-5337 (fax)
Counsel for complainants Hamant and Scanlon

CERTIFICATE OF SERVICE

I certify that a true and exact copy of tide foregoing Memorandum of Complainants Hamant and Scanlon in Opposition to Respondent's Motion to Dismiss was sent via facsimile and mailed First Class, postage prepaid, to counsel for the defendant:

Stephen G. Cochran, Esq.
Womble Carlyle Sandridge & Rice, PLLC
8065 Leesburg Pike, Fourth Floor
Tysons Comer, VA 22182

and mailed to counsel for claimant Thomas W. Bishop:

Jay J. Levit, Esq.
Levit & Mann, P.C.
1301 North Hamilton Street, Suite 100
Richmond, VA 23230-3959

on this 24th day of February, 2006

/s/

_____

EXIBIT 10

RJFS / Compliance Manual - Supervision of Branch Manager

RJFS
NOT FOR CLIENT USE

RJFS / Compliance Manual - Supervision of Branch Manager

As stated in the "Designated Responsibilities" section, Sales Management is responsible for the supervision of Branch Managers. The review of Branch Managers' trading activity is conducted by the Compliance Department via the following procedures.

Managed Account Review System (MARS) Report

The "MARS" report will be used to track each Branch Managers' activities. The Compliance Department will selectively review this report for questionable behavioral patterns in the business practices of the Branch Managers. Any exception raised in this report not readily explained or identified as an exception will be reviewed as a questionable behavioral pattern. (See "Supervision of Branch Office Activity" section for more a detailed explanation of the "MARS" Report.)

Compliance Department Monitoring

Each member of the Compliance Department, Executive and Sales Management areas will be responsible for alerting the Senior Compliance Specialist in charge of Branch Manager supervision

of any potential or realized problems relating to one or more Branch Managers. This includes, but is not limited to, problems perceived during review of exception reports, audit visits, or during review of the Branch Manager's "MARS" report, the High Commissions report, the Active Trading report, and the Mutual Fund Switch report. In addition, other exception reports will be utilized as needed to detect and confirm behavioral patterns. Issues should be summarized in written form. Once again, the nature of the issue will serve to determine if the Branch Manager will be placed under heightened supervision.

Customer/Third Party Complaints

Any Branch Manager identified as the subject of a serious, non-frivolous customer complaint shall be placed on a supervisory watch list for a period of not less than one year. For additional information, refer to the "CUSTOMER/THIRD PARTY COMPLAINTS" section of this manual.

Supervisory Problems

If a financial advisor of the firm is cited and/or disciplined for serious violations of company, industry or government standards or regulations; then the Branch Manager responsible for supervising that financial advisor may be placed under heightened supervision for a period of not less than six months in order to ensure appropriate levels of supervision.

Branch Offices Under Temporary Supervision of the Home Office With No Licensed Principal or Supervisor

An Acting Branch Manager will be appointed by the Raymond James Financial Services Compliance Department to conduct off-site supervision for all branches not having a qualified Branch Manager on site. The Acting Branch Manager will monitor the trading activity at the branch, review Incoming and Outgoing Correspondence, approve all Letters of Authorization, review Complaints (both written and verbal) and review various exception reports produced by the Home Office relating to the activities of the branch office.

For further information, refer to the "NON-PRINCIPALS REPORTING TO THE HUME OFFICE" portion of the "SUPERVISION OF BRANCH OFFICE ACTIVITY" section of this manual.

REVIEW and RESPONSES

"Branch Manager Heightened Supervision / Surveillance"

Branch Manager Heightened Supervision is designed to prevent and detect sales practice violations as well as assure compliance With RJFS and industry rules and regulations for managers who have been determined to require additional oversight. These procedures are implemented jointly between the Compliance Department and RTFS Sales Management, all cases, the Branch Manager

will be notified that he or she is on heightened supervision.

Compliance will attempt to identify potential problems based on past actions and events. Accordingly, any financial advisor with any of the following issues may be placed under Heightened Supervisor:

- legitimate customer complaints
- excessive trading problems (cancel and corrects, 1035 exchanges; mutual fund switches, failures to pay, etc.)
- regulatory inquiries
- documented credit issues (excessive balances, liens, bankruptcies, etc.)
- serious or repetitive delinquencies identified during the course of an audit
- serious or repetitive issues identified by RJFS Compliance as part of an in-house review
- at the request and approval of RJFS Sales Management
- Branch Manager will be notified of placement on Heightened Supervision

Verbal Inquiry

The senior Compliance Specialist may broach the subject of questionable practices with a call to a Branch Manager in order to elicit explanations and discuss solutions. A log will be maintained doting date, time, manager, topics discussed, and resolutions reached. The Branch Manager will continue to be monitored, as well as any other method judged to be necessary. If continued

monitoring demonstrates that the problem is not resolved in a satisfactory manner, the Senior Compliance Specialist will proceed to issue a written letter of inquiry.

Written Inquiry

The Senior Compliance Specialist may address questionable practices with a written letter of inquiry stating areas of concern. A letter of inquiry will serve to delineate each area of concern. In addition, the letter of inquiry will ask for a letter of response answering each point raised, as well as actions taken by the Branch Manager to correct deficiencies. A log will be maintained noting pertinent details regarding each letter sent, and responses received. A copy of each letter of inquiry will be sent to the Regional Compliance Officers and Sales Management If the written response from the Branch Manager does not sufficiently address items raised in the letter of inquiry, a follow-up phone call may be attempted by the Senior Compliance Specialist to clarify problem areas and appropriate responses. The Branch Manager's activities will continue to be monitored through appropriate channels. If the problem areas persist, or if new problem areas develop, the Senior Compliance Specialist will prepare a brief for Regional Compliance Officers and Sales Management.

Brief

If a supervisory problem involving a Branch Manager is not resolved through the channels previously described in this section, the Senior

Compliance Specialist will compose a brief, summarizing the questionable practices and the actions taken to date. Copies of back-up material will be provided as needed including log notes, "MARS" reports, and other documentation. The brief will also contain a suggested course of action. Copies of the brief will be sent to the Regional Compliance Officers and Sales Management The Senior Compliance Specialist will await a response from the Regional Compliance Officers, Sales Management, or both, confirming the course of action to be taken.

Heightened Surveillance

Branch Manager Heightened Surveillance is designed to detect and prevent sales practice violations as well as ensure compliance with Raymond James Financial Services, Inc. and regulatory rules and regulations. These procedures are implemented by the RJFS Compliance department with regular updates provided to RJFS Sales Management. In most cases, the Branch Manager will not be notified that he or she is on heightened surveillance. The results of the surveillance period may yield a recommendation to RJFS Sales Managements to add the Branch Manager to heightened supervision.

Quarterly Reports

On a quarterly basis, the Senior Compliance Specialist will prepare a report for the Regional Compliance Officers and Sales Management Including, but not limited to, the following items;

- updated supervisory list, noting when and why a manager became subject to heightened supervision and when and why a manager was removed from heightened supervision
- summary of verbal and written inquiries, including the nature of the heightened supervision
- Summary of other issues relating to Branch Manager Supervision

Revised April 13, 2004

EXHIBIT 12

EXHIBIT A
RAYMOND JAMES FINANCIAL SERVICES, INC. FA AGREEMENT

THIS AGREEMENT made and entered into this 8 day of March, 2001 by and between **RAYMOND JAMES, FINANCIAL SERVICES, INC ("RJFS"),** and Timothy Eugene Scanlon, Financial Advisor ("F.A"),

WHEREAS, RJFS is a duly qualified and registered broker/dealer in, accordance with the requirements of the Regulatory Authorities (as defined herein); and

WHEREAS, FA, being duly qualified as a Registered Representative (as defined herein), desires to engage in the solicitation of and the purchase and sale of Securities (as defined herein) utilizing the services of RJFS; and

WHEREAS, FA is being retained by Thomas W. Bishop ("Associate") an Associate of RJFS pursuant to all terms and conditions of an independent Sales Associate Agreement between RJFS and the Associate ("ISA Agreement"); and

WHEREAS, it is the intent of the parties to this Agreement that the FA conduct approved securities activities as a Registered Representative and not as an employee of RJFS or any of its corporate affiliates. Pursuant to paragraph 6 of Mimeograph 6566 published by the Office of the

Commissioner of Internal Revenue cumulative bulletin 1951-1. Page 108

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, it is agreed: -

1. **Definitions.**

(a) The term "Clearing Firm" shall mean Raymond James & Associates, Inc. or any other broker/dealer which clears securities transactions for RJFS on a fully disclosed basis.

(b) The term "Other Associates" shall mean any individuals other than the Associate who have entered into an Independent Sales Associate Agreement with RJFS.

(c) The term "Raymond James Financial Services, inc." ("RJFS") shall mean Raymond James Financial Services, Inc., its parent company, affiliates and subsidiaries and their respective directors, officers and employees.

(d) The term "Registered Representative" shall have the meaning provided by Rule 1030 (Article III, Schedule C) of the By-laws of the NASD.

(e) The term "Regulatory Authorities" shall mean the United States Securities and Exchange Commission ("SEC"), the National Association of Securities Dealers, Inc. ("NASD"), MSRB, CBOE,

the Division of Securities and Securities Commissioners of the applicable states and any other association, organization, or governmental authority having jurisdiction over securities transactions by reason of any statute, rule or regulation or by membership or agreement with such association, organization or governmental authority

(f) The term "RJFS Clients" shall mean all clients with accounts at RJFS that are not Associate's Clients.

(g) The term "RJFS Property" shall mean lists, information, books, records, documents or other records, whether written or not; pertaining to RJFS Clients along with lists, information or other records of or regarding Other Associates and their Sub Associates.

(h) The term "Securities" shall have the same definition as set forth in Section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(i) The term "Sub-Associate" shall mean persons retained by the Associate, including but not limited to any FA.

2. **Relationship.** This Agreement shall not be deemed to create an agency, employment, or joint venture relationship between RJFS and FA. FA's performance under this Agreement

shall be as an Independent Contractor. In that regard, RJFS has not acquired any assets or liabilities of FA or of any business entity to which FA is an owner, partner, officer, shareholder, or director, and that RJFS has not merged with any business entity with which FA is an owner, partner, officer shareholder, or director.

3. **Termination of Agreement.**

(a) Either party may terminate this Agreement by providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement. Given the unique transactional nature of the securities business, there is no need for a liquidated damages provision should either party voluntarily terminate the Agreement before the end of its term as neither party would be significantly damaged by such termination.

(b) Notwithstanding the foregoing, either party shall have the right to immediately terminate this Agreement immediately for cause in the event of a material breach of the Agreement, including but not limited to a failure to comply with any applicable laws, both federal and state, or any rule, regulation, or interpretation of the Regulatory Authorities or policy of RJFS.

(c) Associate may instruct RJFS to cancel this agreement at Associate's sole discretion.

4. **Registration.** The FA will use "best (efforts" to quality with the Regulatory Authorities as a Registered Representative of RJFS. The cost of obtaining and maintaining such registrations shall be paid by the FA. and RJFS shall have no responsibility for their payment.

5. **Services.** The FA has the right to solicit and engage in the purchase and sale of RJFS approved securities with the general public, and engage in other business activities except to the extent such activities are restricted or prohibited by the rules, regulations and interpretations of the Regulatory Authorities. RJFS policy, or the Associate.

6. **Use of RJFS Name; Advertising.** FA shall indicate on stationery, telephone listings or other advertisements that FA. is affiliated with RJFS in accordance with the rules and regulations and interpretations of the Regulatory Authorities and RJFS policy. Nothing contained herein shall be construed as a grant of authority to the FA to bind or commit RJFS to any agreement entered into by the FA. which authority is hereby specifically disclaimed

7. **Non-Solicitation.**

(a) FA shall not, without prior written approval of an officer of RJFS, solicit. hire or

otherwise engage, directly or indirectly, (i) employees of RJFS. its affiliates or subsidiaries or fii) Other Associates or their Sub-Associates. This restriction is effective during the term of this agreement and for a period of three (3) years thereafter

(b) FA shall not.solicit or do business, with a client of the Associate, any RJFS Client without prior approval of such Associate or an officer of RJFS. This restriction is effective during the term of this Agreement and for a period of three (3) years thereafter.

8. **Information.**

(a) RJFS Property is special, valuable and unique assets of the business of RJFS. RJFS Property is the confidential and proprietary property of RJFS. RJFS Property shall not be transmitted verbally, in writing, in computerized or other form by the Associate except in the ordinary course of conducting business for RJFS. All of said records or any part of them constitute trade secrets of RJFS and become the sole property and proprietary information of RJFS. and shall be treated by the Associate as confidential information of RJFS. RJFS has incurred substantial cost and expense in connection with RJFS Property, and will continue to incur expense in the future to maintain them. RJFS Property is and shall remain the property of RJFS at all times, including during the term and after termination on this Agreement.

(b) All records which are commonly referred to as "branch office copies" within the vernacular of the securities brokerage industry, including, but not limited to, order tickets, account documentation, complaint and correspondence files, are and shall remain the property of RTFS at all times, including during the term and after termination of this Agreement. None of such records, nor any part of them, are to be removed by the FA. However. FA with Associate's prior approval may make and remove copies of these records for FA's use.

(c) FA will return all records and information not covered in (a) or (b) above, along with any other documents referencing RJFS. including but not limited to marketing information, and advertising, to RJFS within ten (10) days of the termination of this Agreement at FA's cost.

d) For purposes of this paragraph all documents shall be shipped to the St. Petersburg office of RJFS. Attention Compliance Department.

9. **Payment of Commissions and Fees**. RJFS has no obligation to pay any commission or fee earned by the FA. Payment of commissions or fees to the FA is the subject of the FA's agreement with the Associate, and the FA does not have any recourse or cause of action against RJFS for commissions or fees.

Commissions or fees will be paid by RJFS to the Associate only when such commissions or fees are received by RJFS and are subject to obligations Associate may have to RJFS pursuant to Associate's Independent Sales Associate Agreement.

10. **Minimum Production.** RJFS may establish minimum FA production requirements. Failure of FAs to meet the minimum production requirement may result in the Associate being charged a fee, which is customarily passed on to the FA for whom the fee is charged.

11. **Expenses.** Expenses which FA incurs in the performance of this Agreement, including, without limitation, taxes, insurance, and costs and fees relating to FA's licensing, registration, errors and omissions insurance and such other support charges which RJFS, in the normal course of business, allocates directly to the Associate, and which the Associate customarily passes on to the FA, shall be the sole and exclusive obligation of FA

12. **Observance of Regulatory Requirements.** Due to the unique nature of the securities brokerage business, the activities contemplated under this Agreement are controlled by laws, both federal and slate, or rules, regulations and interpretations under the Regulatory Authorities. FA will adhere to all applicable laws, rules, regulations and

interpretations of local, state, and federal Regulatory Authorities.

13. **Investment Advisor.**

(a) RJFS may act as an Investment Advisor in accordance with the Investment Advisors Act of 1940 or state regulation on behalf of Associate or Sub-Associates under this Agreement. The activities of an Investment Advisor also fall within the laws, both federal and state, and the rules, regulations and interpretations of the Regulatory Authorities.

(b) Alternatively, FA, with Associate's permission, may independently apply for registration as an Investment Advisor. In such event. FA will notify RJFS at least thirty (30) days prior to submitting an application for such registration and provide RJFS with a copy of any application at least twenty-one (21) days prior to its submission to the Regulatory Authorities. RJFS will review the application and reserves the right to require modifications to FA's Investment Advisor application.

(c) In the event FA was previously established as a Registered investment Advisor prior to entering into this Agreement, a review of any investment advisor application, and any subsequent modifications or amendments thereto, will be made by RJFS. In said circumstances, FA will notify all persons or entities to whom or to which FA

offers or provides Investment Advisory services that such services are not related to or provided through RJFS and FA is solely responsible for said activity.

(d) If Regulatory Authorities require that RJFS supervise the Investment Advisory activity, described in (b) or (c) above, FA agrees to such supervision and will pay any attendant charges.

14. **Suspension and Fines.** RJFS shall have the right to require that FA immediately suspend transacting in a particular security or transacting in any or all securities with one, several, or all accounts to the extent that any such transaction could, in the opinion of RJFS, be considered a breach of any law, rule, regulation or RJFS policy. RJFS may also fine FA where, in its opinion, the actions of FA constitute a violation of any law, rule, regulation, interpretation of the Regulatory Authorities or RJFS policy.

15. **Indemnification.**

(a) The FA indemnifies RJFS. its parent company, its Associates, successors and assigns of their respective officers, directors, employees, agents clearing firms and- affiliates, and all and stockholders from and against:

(1) all liabilities of any nature of FA, his/her employees, agents, customers or

others whether accrued, absolute, contingent or otherwise existing as of the date of this Agreement;

(2) all liabilities and costs arising out of the conduct of FA's business activity, including but not limited to any action, in-action misrepresentation, omission, conduct, misconduct, unsecured debit, violation of the terms of this Agreement, RJFS policy or any law, federal or state, any rule or regulation or interpretation of the Regulatory Authorities, or otherwise by FA his/her employees, agents or customers agents or customers or others.

(b) RJFS indemnifies FA. FA's heirs employees and agents from and against:

(1) liabilities of any nature of RJFS, its successors and assigns, clearing firms and affiliates, and all of their respective officers, directors, employees, agents and stockholders or others whether accrued, absolute contingent or otherwise existing as of the date of this Agreement.

(2) all liabilities and costs arising directly out of the conduct of FA's business activity, including but not limited to any action, in-action. misrepresentation, omission, conduct, misconduct, **violation** of the terms of

this Agreement, RJFS policy or any law, federal or state, any rule, regulation or interpretation of the Regulatory Authorities or otherwise by FA, his/her employees, agents, clients or others.

(c) The parties reserve any rights they may have to seek indemnification or contribution under this section pending final resolution of the action, suit, proceeding, demand, claim or assessment to which this section may apply. Resolution of each party's responsibility under this section shall if not mutually agreed upon, be determined by arbitration before the NASD.

(d) If the FA is entitled to receive proceeds from any insurance coverage for any liability for which they are required to indemnify RJFS, FA hereby assigns to RJFS any and all such proceeds to the extent FA would otherwise be obligated hereunder.

(e) All liabilities set forth above shall include settlements, judgments, awards, interest, costs, reasonable attorneys fees (both internal and external) whether incurred at arbitration, bankruptcy, or at the administrative, trial, appellate or post judgment level.

(f) All the indemnification provisions of this section shall continue for a period of six (6) years following termination of this Agreement.

16. **Obligations of RJFS.** RJFS will maintain an effective and adequately capitalized broker/dealer properly registered with all Regulatory Authorities. RJFS agrees to make available facilities for execution of securities transactions, confirmation of said transactions, and a system for receipt and disbursement of funds and securities.

17. **Breach.**

(a) In the event of a breach, or threatened breach, of any provision of this Agreement by FA, RJFS shall be entitled to an injunction restraining such breach without showing or proving the actual damage sustained or about to be sustained. This remedy, and all other remedies provided in this Agreement, shall be cumulative and the exercise or non-exercise of this remedy shall not preclude any other remedy at law or in equity.

(b) In the event of a breach of this Agreement, the prevailing party in any resulting litigation or arbitration shall recover its costs incurred in enforcing its rights with respect to such breach. Such costs shall include, without limitation, reasonable internal and external attorneys fees and litigation expenses.

18. **Construction; Forum Selection Clause; Severability.** It is the intent of the parties hereto that the terms of this Agreement shall be construed pursuant to the laws of the State of Florida and in accordance with the requirements of the Regulatory Authorities to the extent applicable. The parties agree that all legal proceedings under this Agreement will be held in Pinellas County, Florida. To the extent that any provisions of this Agreement shall be deemed invalid or unenforceable, then this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19. **Survival.** Paragraphs 7, 8, 11, and 15 of this Agreement shall survive termination agreement.

20. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

21. **Modification.** No change or modification of this Agreement shall be valid unless in writing and signed by all of the parties hereto.

22. **Entire Agreement.** This instrument and its attached initialed exhibits, if any, are the entire Agreement of the FA and RJFS, its corporate affiliates and their employees, except to the extent of any document incorporated herein by reference or any statutes, rules and regulations referred to herein.

IN WITNESS WREREOF, the parties hereto have executed this Agreement the day and year first above written.

_____/s/_____ _____/s/_____
FINANCIAL ADVISOR ASSOCIATE

RAYMOND JAMES FINANCIAL SERVICES, INC.

Mary E. Haas, AVP
_/s/_____, First VP.
Authorized Signature

EXHIBIT 13

EXHIBIT A
RAYMOND JAMES FINANCIAL SERVICES, INC.
FA AGREEMENT

THIS AGREEMENT made and entered into this 8 day of March , 2001 by and between **RAYMOND JAMES FINANCIAL SERVICES, INC. ("RJFS")**, and Steven E. Hamant , Financial advisor ("FA").

WHEREAS, RJFS is a duly qualified and registered broker/dealer in accordance with the requirements of the Regulatory Authorities (as defined herein); and

WHEREAS, FA is being retained by THOMAS W. BISHOP, ("Associate") an Associate of RJFS pursuant to all terms and conditions of an independent Sales Associate Agreement between RJFS and the Associate ("ISA Agreement"); and

WHEREAS, it is the intent of the parties to this Agreement that the FA conduct approved securities activities as a Registered Representative and not as an employee of RJFS or any of its corporate affiliates, pursuant to paragraph 6 of Mimeograph 6566 published by the Office of the Commissioner of Internal Revenue in cumulative bulletin 1951-1, page 108;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

1. **Definitions.**

(a) The term "Clearing Firm" shall mean Raymond James & Associates, Inc. or any other broker/dealer which clears securities transactions for RJFS on a fully disclosed basis.

(b) The term "Other Associates" shall mean any individuals other than the Associate who have entered into an Independent Sales Associate Agreement with RJFS.

(c) The term "Raymond James Financial Services, Inc." ("RJFS") shall mean Raymond James Financial Services, Inc., its parent company, affiliates and subsidiaries and their respective directors, officers and employees.

(d) The term "Registered Representative" shall have the meaning provided by Rule 1030 (Article III, Schedule C) of the By-laws of the NASD.

(e) The term "Regulatory Authorites" shall mean the United States Securities and Exchange Commission ("SEC") the National Association of Securities Dealers, Inc. ("NASD"), MSRB, CBOE, the Division of Securities and Securities Commissioners of the applicable states and any other association, organization, or governmental authority having jurisdiction over securities transactions by reason of any statute, rule or regulation or by membership or agreement with such association, organization or governmental authority.

(f) The term "RJFS Clients" shall mean all clients with accounts at RJFS that are not Associate's Clients.

(g) The term "RJFS Property" Shall mean lists, information, books, records, documents or other records whether written or not; pertaining to RJFS Clients along with lists, information or other records of or regarding Other Associates and their Sub-Associates.

(h) The term "Securities" shall have the same definition as set forth in Section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(i) The term "Sub-Associate" shall-mean" persons retained by the Associate, including but not limited to any FA.

2. **Relationship.** This Agreement shall not be deemed to create an agency, employment, or joint venture relationship between RJFS and FA. FA's performance under this Agreement shall be as *an* Independent Contractor. In that regard, RJFS has not acquired any assets or liabilities of FA or of any business entity to which FA is *an* owner, partner, officer, shareholder, or director, and that RJFS has not merged with any business entity with which FA is an owner, partner, officer shareholder or director.

3. **Termination of Agreement.**

(a) Either party may terminate this Agreement by providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement.

Given the unique transactional nature of the securities business, there is no need for a liquidated damages provision should either party voluntarily terminate the Agreement before the end of its term as neither party would be significantly damaged by such termination.

(b) Notwithstanding the foregoing, either party shall have the right to immediately terminate this Agreement immediately for cause in the event of a material breach of the Agreement, including but not limited to a failure to comply with any applicable laws, both federal and state, or any rule, regulation, or interpretation of the Regulatory Authorities or policy of RJFS.

(c) Associate may instruct RJFS to cancel this agreement at) Associate's sole discretion.

4. **Registration.** The FA will use "best efforts" to qualify with the Regulatory Authorities as a Registered Representative of RJFS. The cost of obtaining and maintaining such registrations shall be paid by the FA, and RJFS shall have no responsibility for their payment.

5. **Services.** The FA has the right to solicit and engage in the purchase and sale of RJFS approved securities with the general public and engage in other business activities except to the extent such activities are restricted or prohibited by the rules, regulations and interpretations of the Regulatory Authorities, RJFS policy, or the Associate.

6. **Use of RJFS Name: Advertising.** FA shall indicate on stationery, telephone listings or other advertisements that FA is affiliated with RJFS in accordance with the rules and regulations and interpretations of the Regulatory Authorities and RJFS policy. Nothing contained herein shall be construed as a grant of authority to the FA to bind or commit RJFS to any agreement entered into by the FA, which authority is hereby specifically disclaimed.

7. **Non-Solicitation.**

(a) FA shall not without prior written approval of an officer of RJFS, solicit, hire or otherwise engage, directly or indirectly, (i) employees of RJFS, its affiliates or subsidiaries or (ii) Other Associates or their Sub-Associates. This restriction is effective during the term of this agreement and for a period of three (3) years thereafter.

(b) FA shall not solicit or do business, with a client of the Associate, any RJFS Client without prior approval of such Associate or an officer of RJFS. This restriction is effective during the term of this Agreement and for a period of three (3) years thereafter.

8. **Information.**

(a) RJFS Property is special, valuable and unique assets of the business of RJFS. RJFS Property is the confidential and proprietary

property of RJFS. RJFS Property shall not be transmitted verbally, in writing, in computerized or other form by the Associate except in the ordinary course of conducting business for RJFS. All of said records or any part of them constitute trade secrets of RJFS and become the sole property and proprietary information of RJFS, and shall be treated by the Associate as confidential information of RJFS. RJFS has incurred substantial cost and expense in connection with RJFS Property, and will continue to incur expense in the future to maintain them. RJFS Property is and shall remain the property of RJFS at all times, including during the term and after termination of this Agreement.

(b) All records which are commonly referred to as "branch office copies" within the vernacular of the securities brokerage industry, including, but not limited to, order tickets, account documentation, complaint and correspondence files are and shall remain the property of RJFS at all times, including during the term and after termination of this Agreement. None of such records, nor any part of them, are to be removed by the FA. However, FA with Associated prior approval may make and remove copies of these records for FA's use.

c) FA will return all records and information not covered in (a) or (b) above, along with any other documents referencing RJFS, including but not limited to marketing

information, and advertising, to RJFS within ten (10) days of the termination of this Agreement at FA's cost.

d) For purposes of this paragraph all documents shall be shipped to the St. Petersburg office of RJFS, Attention: Compliance Department.

9. **Payment of Commissions and Fees.** RJFS has no obligation to pay any commission or fee earned by the FA. Payment of commissions or fees to the FA is the subject of the FA's agreement with the Associate, and the FA does not have any recourse or cause of action against RJFS for commissions or fees. Commissions or fees will be paid by RJFS to the Associate only when such commissions or fees are received by RJFS and are subject to obligations Associate may have to RJFS pursuant to Associate's Independent Sales Associate Agreement.

10 **Minimum Production.** RJFS may establish minimum FA production requirements. Failure of FAs to meet the minimum production requirement may result in the Associate being charged a fee, which is customarily passed on to the FA for whom the fee is charged.

11 **Expenses.** Expenses which FA incurs in the performance of this Agreement, including, without limitation, taxes, insurance, and costs and fees relating to FA's licensing, registration, errors and omissions insurance and such other support charges which RJFS,

in the normal course of business, allocates directly to the Associate, and which the Associate customarily passes on to the FA, shall be the sole and exclusive obligation of FA.

12. **Observance of Regulatory Requirements.** Due to the unique nature of the securities brokerage business, the activities contemplated under this Agreement are controlled by laws, both federal and state, or rules, regulations and interpretations under the Regulatory Authorities. FA will adhere to all applicable laws, rules, regulations and interpretations of local, state, and federal Regulatory Authorities.

13. **Investment Advisor.**

(a) RJFS may act as an Investment Advisor in accordance with the Investment Advisors Act of 1940 or state regulation on behalf of Associate or Sub-Associates under this Agreement. The activities of an Investment Advisor also fall within the laws, both federal and state, and the rules, regulations, and interpretations of the Regulatory Authorities.

(b) Alternatively, FA, with Associate's permission, may independently apply for registration as an Investment Advisor. In such event, FA will notify RJFS at least thirty (30) days prior to submitting an application for such registration and provide RJFS with a copy of any application at least twenty-one (21) days prior to its submission to the Regulatory Authorities. RJFS will review the

application and reserves the right to require modifications to FA's Investment Advisor application.

(c) In the event **FA** was previously established as a Registered Investment Advisor prior to entering into this Agreement, a review of any investment advisor application, and any subsequent modifications or amendments thereto, will be made by RJFS. In said circumstances, FA will notify all persons or entities to whom or to which FA offers or provides Investment Advisory services that such services are not related to or provided through RJFS and FA is solely responsible for said activity.

(d) If Regulatory Authorities require that RJFS supervise the Investment Advisory activity, described in (b) or (c) above, FA agrees to such supervision and will pay any attendant charges.

14. **Suspension and Fines.** RJFS shall have the right to require that FA immediately suspend transacting in a particular security or transacting in any or all securities with one, several, or all accounts to the extent that any such transaction could, in the opinion of RJFS, be considered a breach of any law, rule, regulation or RJFS policy. RJFS may also fine FA where, in its opinion, the actions of FA constitute a violation of any law, rule, regulation, interpretation of the Regulatory Authorities or RJFS policy.

15. Indemnification.

(a) The FA indemnifies RJFS, its parent company, its Associates, successors and assigns, clearing firms and affiliates, and all of their respective officers, directors, employees, agents and stockholders from and against:

(1) all liabilities of any nature of FA, his/her employees, agents, customers or others whether accrued, absolute, contingent or otherwise existing as of the date of this Agreement.

(2) all liabilities and costs arising out of the conduct of FA's business activity, including but not limited to any action, in-action, misrepresentation, omission, conduct, misconduct, unsecured debit, violation of the terms of this Agreement, RJFS policy or any law federal or state, any rule or regulation or interpretation of the Regulatory Authorities or otherwise by FA, his/her employees, agents or customers or others.

(b) RJFS indemnifies FA, FA's heirs, employees and agents from and against:

(1) liabilities of any nature of RJFS, its successors and assigns, clearing firms and affiliates, and all of their respective officers, directors, employees, agents and stockholders or others whether accrued, absolute contingent or

otherwise existing as of the date of this Agreement.

(2) all liabilities and costs arising directly out of the conduct of FA's business activity, including but not limited to any action, inaction, misrepresentation, omission, conduct, misconduct, violation of the terms of this Agreement, RJFS policy or any law, federal or state, any rule, regulation or interpretation of the Regulatory Authorities, or otherwise by FA, his/her employees, agents, clients or others.

(c) The parties reserve any rights they may have to seek indemnification or contribution under this section pending final resolution of the action, suit, proceeding, demand, claim or assessment to which this section may apply. Resolution of each party's responsibility under this section shall, if not mutually agreed upon, be determined by arbitration before the NASD.

(d) If the FA is entitled to receive proceeds from any insurance coverage for any liability for which they are required to indemnify RJFS, FA hereby assigns to **RJFS** any and all such proceeds to the extent FA would otherwise be obligated hereunder.

(e) All liabilities set forth above shall include settlements, judgments, awards, interest, costs, reasonable attorneys fees (both

internal and external) whether incurred at arbitration, bankruptcy, or at the administrative, trial, appellate or post judgment level.

(f) All the indemnification provisions of this section shall continue for a period of six (6) years following termination of this Agreement.

16. **Obligations of RJFS.** RJFS will maintain an effective and adequately capitalized broker/dealer properly registered with all Regulatory Authorities. RJFS agrees to make available facilities for execution of securities transactions, confirmation of said transactions, and a system for receipt and disbursement of funds and securities.

17. **Breach.**

(a) In the event of a breach, or threatened breach, of any provision of this Agreement by FA, RJFS shall be entitled to an injunction restraining such breach without showing or proving the actual damage sustained or about to be sustained. This remedy, and all other remedies provided in this Agreement, shall be cumulative and the exercise or non-exercise of this remedy shall not preclude any other remedy at law or in equity.

(b) In the event of a breach of this Agreement, the prevailing party in any resulting litigation or arbitration shall recover its costs incurred in enforcing its rights with respect to such breach. Such costs shall include, without

limitation, reasonable internal and external attorneys fees and litigation expenses.

18. **Construction; Forum Selection Clause; Severability.** It is the intent of the parties hereto that the terms of this Agreement shall be construed pursuant to the laws of the State of Florida and in accordance with the requirements of the Regulatory Authorities to the extent applicable. The parties agree that all legal proceedings under this Agreement will be held in Pinellas County, Florida. To the extent that any provisions of this Agreement shall be deemed invalid or unenforceable, then this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19. **Survival**. Paragraphs 7, 8, 11,and 15 of this Agreement shall survive termination agreement.

20. **Recitals**. The above recitals are true and correct and are incorporated herein by reference.

21. **Modification**. No change or modification of this Agreement shall be valid unless in writing and signed by all of the parties hereto.

22. **Entire Agreement.** This instrument and its attached initialed exhibits, if any, are the entire Agreement of the FA and RJFS, its corporate affiliates and their employees, except to the extent of any document incorporated

herein by reference or any statutes, rules and regulations referred to herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

/S/
FINANCIAL ADVISOR

/S/
ASSOCIATE

RAYMOND JAMES FINANCIAL SERVICES, INC.

Mary E. Haas, AVP , First V.P.

/S/
Authorized Signature

EXHIBIT 14

4KQ 4810
Thomas Bishop
Branch Manager

RAYMOND JAMES FINANCIAL SERVICES, INC.
INDEPENDENT SALES ASSOCIATE AGREEMENT

THIS AGREEMENT made and entered into this 13 day of July, 2001, by and between **RAYMOND JAMES FINANCIAL SERVICES, INC. ("RJFS")**, and THOMAS W. BISHOP ("Associate").

WHEREAS. RJFS is a duly qualified and registered broker/dealer in accordance with the requirements of the Regulatory Authorities (as defined herein); and

WHEREAS Associate, being duly qualified as a Registered Representative (as defined herein), desires to engage in the solicitation of and the purchase and sale of Securities (as defined herein) utilizing the services RJFS; and

WHEREAS, it is the intent of the parties to this Agreement that the Associate conduct such securities activities as an Independent Contractor and not as an employee of RJFS or any of its affiliates, pursuant to paragraph 6 of Mimeograph 6566 published by the Office of the Commissioner of Internal Revenue in cumulative bulletin 1951-1. page 108

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby

acknowledged, all parties hereby acknowledge, understand, and agree that:

1. **Definitions.**

(a) "Associate's Clients" shall mean clients who have any account with RJF or an account held elsewhere which lists RJFS as the broker/dealer of record and the Associate or a Sub-Associate as the Financial Advisor for said account.

(b) "Clearing Firm" shall mean Raymond James & Associates, Inc. or any other broker/dealer which clears securities transactions for RJFS on a fully disclosed basis.

(c) "Financial Advisor" ("FA"), shall mean any Registered Representative retained by the Associate as an FA. All FAs shall execute a Financial Advisor Agreement in substantially the form of Exhibit "A ".

(d) "Other Associates' shall mean any individuals other than the Associate who have entered into an Independent Sales Associate Agreement similar to this Agreement.

(e) "Raymond James Financial Services, Inc." ("RJFS") shall mean Raymond James Financial Services, Inc., its parent company, affiliates, and subsidiaries, and their respective directors, officers, employees and agents.

(e) "Registered Representative" shall have the meaning provided by Rule 1030 (Article III, Schedule C) of the By-laws of the NASD.

(f) "RJFS Clients" shall mean all clients with accounts at RJFS that are not Associate's Clients.

(h) "RJFS Property" shall mean lists, information, books, records, documents or other records, whether written or not, pertaining to RJFS Clients, along with lists, information or other records of or regarding Other Associates and their Sub-Associates.

(i) "Regulatory Authorities" shall mean the United States Securities and Exchange Commission ("SEC"), the National Association of Securities Dealers, Inc. ("NASD"), MSRB, CBOE, the Division of Securities and Securities Commissioners of the applicable states and any other association, organization, or governmental authority having jurisdiction over securities transactions by reason of any statute, rule or regulation, or by membership or agreement with such association, organization or governmental authority.

(j) "Securities" shall have the same definition as set forth in Section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(k) "Sub-Associate" shall mean persons retained by the Associate, including but not limited to any FA.

2. **Relationship.** This Agreement shall not be deemed to create an agency, employment, or joint venture relationship between RJFS and Associate. Associate's performance under this Agreement shall be as an Independent Contractor. In that regard, RJFS has not acquired any assets or liabilities of Associate or any business entity to which Associate is an owner, partner, officer, shareholder, or director, and that RJFS has not merged with any business

entity with which Associate is an owner, partner, officer, shareholder, or director.

3. **Termination of Agreement**. Either party may terminate this Agreement by providing the other party no less than five (5) business days prior written notice of intent to terminate this Agreement. Given the unique transactional nature of the securities business, there is no need for a liquidated damages provision with respect to this agreement should either party voluntarily terminate the Agreement as neither party would be significantly damaged by such termination.

Notwithstanding the foregoing, either party shall have the right to terminate this Agreement immediately for cause in the event of a material breach of the Agreement, including but not limited to a failure to comply with any applicable law, either federal or state, or any rule, regulation, or interpretation of the Regulatory Authorities or policy of RJFS.

4. **Services.** Associate has the right to solicit and engage in the purchase and sale of Securities with the general public, and engage in other business activities in accordance with the rules, regulations and interpretations of the Regulatory Authorities and RJFS policy.

5. **Sub-Associates.** Associate may retain Sub-Associates subject to RJFS approval. Associate shall be responsible in all respects for all compensation, the applicable taxes and any benefits offered to Sub-Associates.

6. **Non-Solicitation**.

(a) Associate shall not. without prior written approval of RJFS, solicit, hire or otherwise engage, directly or indirectly, (i) employees of RJFS, its affiliates or subsidiaries or (ii) Other Associates or their Sub-Associates. This restriction is effective during the term of this Agreement and for period of three (3) years thereafter.

(b) RJFS shall not solicit, hire or otherwise engage directly or indirectly any of Associate's Sub-Associate without prior written approval of Associate.

(c) RJFS will not solicit Associate's Clients upon termination of this Agreement. However, RJFS may notify Associate's Clients of the termination of this Agreement and may reassign them to Other Associates if the client voluntarily elects or Associate fails to transfer said account to another broker/dealer within 60 days of termination of this Agreement.

(d) Associate shall not solicit or do business with any RJFS Client without prior approval of the Other Associate of RJFS or an officer of RJFS. This restriction is effective during the term of this agreement and for a period of three (3) years thereafter.

(e) Associate shall not solicit or do business with institutional accounts including but not limited to banks, trust companies, mutual funds and money managers, without the prior approval of RJFS.

7. **Use of RJFS Name; Advertising.** Associate, shall indicate on stationery, telephone listings or

other advertisements that Associate is affiliated with RJFS in accordance with the rules and regulations and interpretations of the Regulatory Authorities and RJFS policy. Associate will disclose in all advertising and promotional material that securities are offered exclusively through RJFS. Nothing contained herein shall be construed as a grant of authority to the Associate to bind or commit RJFS to any agreement entered into by the Associate, which authority is hereby specifically disclaimed.

8. **Office Location.** The office location(s), for purposes of engaging in securities transactions, which shall be subject to approval by RJFS, shall initially be at the address(es) specified by Associate on Exhibit B. Associate will be solely responsible for the management, operation, and terms of any agreement to lease, service, or purchase facilities for such office, and will promptly notify RJFS of any change in address. RJFS shall have no liability with respect to such facilities and RJFS' name shall not appear on any agreements relating to such facilities or services provided thereto.

9. **General Liability Insurance.** Associate shall, at Associate's expense, carry general liability insurance on the office location and any other registered location in an amount of not less than $300,000. RJFS shall be named as a co-insured under said policy with a copy provided to RJFS. From time to time additional insurance may be necessary, which insurance Associate will obtain at Associate's expense.

10. **Expenses.** In addition to any expenses incurred for maintenance of any office or payment of Sub-Associates, any and all other expenses which Associate may incur shall be the sole and exclusive obligation of Associate, including but not limited to the payment of any registration fees for Associate or Sub-Associates, quotation services, errors and omissions insurance and such other support charges which RJFS. in the normal course of business, allocates directly to Associate and Sub-Associates. RJFS may deduct Associate's, Sub-Associate's or Associate's affiliate's expenses directly from the branch payroll.

11. **Commission and Fees,** Clients executing securities transactions shall be charged commissions and/or fees. RJFS will pay Associate a portion of the gross commissions or fees earned on each transaction or account by Associate or any Sub-Associates in accordance with the payout schedule, then in effect, which schedule RJFS may modify from time to time. The payments hereunder shall be made twice monthly on completed transactions. RJFS shall not be liable for payment of commissions or fees until such commissions or fees are received by RJFS. In the event commissions or fees paid to the Associate are charged back or reversed for any reason, or RJFS is entitled to indemnification pursuant to paragraph 20(a) hereof, Associate will reimburse RJFS for such amount, which may be deducted directly from any future payments due Associate or from any RJFS brokerage account in which Associate has an interest.

12. Continuing Compensation.

(a) Commissions and/or fees payable to an Associate pursuant to paragraph 11 at the time of the death of an Associate shall be paid to the estate of the Associate, less any amounts due RJFS. In the event Associate terminates this Agreement RJFS agrees to pay commissions and/or fees RJFS receives pursuant to paragraph 11 for a period of ninety (90) days from that date with respect to transactions occurring or fees earned before the date of termination.
(b) RJFS agrees to pay. or allow Associate to pay, commissions and/or fees in accordance with the rules of appropriate Regulatory Authorities.
(c) RJFS is under no obligation to pay commissions and/or fees upon termination of this Agreement except as set forth in this section.

13. Minimum Production RJFS may establish minimum branch and FA production requirements. Failure of the branch or FAs to meet the minimum production requirement may result in the branch being charged a fee.

14. Principal's License. Licensure as a general securities principal (Series 24) or other licensure acceptable to RJFS is a requirement of securing and maintaining this Agreement with RJFS. Failure to obtain a principal's registration in a timely manner (as stipulated by RJFS policy) will result in substantial penalties and termination of this Agreement, and suspension or a bar (temporary or permanent) of said principal registration (or

acceptable alternative) will result of termination of this Agreement.

15. **Assignment.** Associate may not assign this Agreement. RJFS may assign this Agreement to any successor in interest, affiliate or subsidiary.

16. **Information,**

(a) RJFS Property is special, valuable and unique assets of the business of RJFS. RJFS Property is the confidential and proprietary property of RJFS. RJFS Property shall not be transmitted verbally, in writing, in computerized or other form by the Associate except in the Ordinary course of conducting business for RJFS. All of said records or any part of them constitute trade secrets of RJFS and become the sole property and proprietary information of RJFS, and shall be treated by the Associate as confidential information of RJFS. RJFS has incurred substantial cost and expense in connection with RJFS Property, and will continue to incur expense in the future to maintain them. RJFS Property is and shall remain the property of RJFS at all times, including during the term and after termination of this Agreement.

(b) All records which are commonly referred to as "branch office copies" within the vernacular of the securities brokerage industry, including, but not limited to, order tickets, account documentation, complaint and correspondence files, are and shall remain the property of RJFS at all times, including during the term and after termination of this Agreement. None of the originals of such records, nor any part of them, are to be removed by the Associate.

However Associate may make and remove copies of these records for Associate's use.

(c) Associate will return all records and information covered in (a) or (b) along with any other documents referencing RJFS, including, but not limited to marketing information and advertising, to RJFS within ten (10) days of the termination of this Agreement at Associate's cost.

(d) For purposes of this paragraph all documents shall be shipped to the St. Petersburg office of RJFS, Attention: Compliance Department.

17. **Observance of Regulatory Requirements** Due to the unique nature of the securities brokerage business, many of the activities contemplated under this Agreement are controlled by laws, both federal and state, or rules, regulations and interpretations of the Regulatory Authorities. Associate will be responsible for and ensure that Associate and all Sub-Associates will adhere to all such applicable laws, rules, regulations, and interpretations.

18. **Suspension and Fine.** RJFS shall have the right to require that Associate immediately suspend any activity which, in the opinion of RJFS, is or could be considered a breach of any law, rule or regulation of the Regulatory Authorities or RJFS policy. RJFS may fine Associate or Sub-Associate where, in its pinion, the actions of Associate or Sub-Associate, constitute a violation of any law, rule, regulation, interpretation of the Regulatory Authorities or RJFS policy.

19. Investment Advisor.

(a) RJFS may act as an Investment Advisor in accordance with the Investment Advisors Act of 1940 or state regulation on behalf of Associate or Sub-Associates under this Agreement. The activities of an Investment Advisor also fall within the laws, both federal and state, and the rules, regulations, and interpretations of the Regulatory Authorities.

(b) Alternatively, Associate may independently apply for registration as an Investment Advisor. In such event. Associate will notify RJFS at least thirty (30) days prior to submitting an application for such registration and provide RJFS with a copy of any application at least twenty-one (21) days prior to its submission to the Regulatory Authorities. RJFS will review the application and reserves the right to require modifications to Associate's Investment Advisor application.

(c) In the event Associate was previously established as a Registered Investment Advisor prior to entering into this Agreement, a review of any investment advisor application, and any subsequent modifications or amendments thereto, will be made by RJFS. In said circumstances, Associate will notify all persons or entities to whom or to which Associate offers or provides Investment Advisory services that such services are not related to or provided through RJFS and Associate is solely responsible for said activity.

(d) If Regulatory Authorities require that RJFS supervise the Investment Advisory activity, described in (b) or (c) above. Associate agrees to such supervision and will pay any attendant charges.

20. Indemnification

(a) Associate indemnifies RJFS. its parent company, its successors and assigns, clearing firms and affiliates, and all of their respective officers, directors, employees, agents, and stockholders from and against:

(1) all liabilities of any nature of Associate, Sub-Associates, or their employees, agents, customers or others whether accrued, absolute, contingent, or otherwise existing as of the date of this Agreement;
(2) all liabilities and costs arising out of the conduct of Associate's business activity, including but not limited to any action, inaction, misrepresentation, omission, conduct, misconduct, unsecured debit, failure to supervise, violation of the terms of this Agreement, RJF policy, or any law, federal or state, any rule, regulation or interpretation of the Regulatory Authorities, or otherwise, by Associate, Sub-Associates, or their employees, agents, clients or others.

(b) RJFS indemnifies Associate, Associate's heirs, employees, Sub-Associates and agents from and against:

(1) all liabilities of any nature of RJFS, its successors and assigns, clearing firms and affiliates, and all of their respective officers, directors, employees, agents and stockholders or others, whether accrued, absolute, contingent or otherwise existing as of the date of this Agreement;
(2) all liabilities arising out of the conduct of RJFS business activities, including but not limited to

any action, inaction, misrepresentation, omission, conduct, misconduct, violation of the terms of this Agreement or any law, federal or state, any rule, regulation or interpretation of the Regulatory Authorities, or otherwise, by RJFS, its successors and assigns, clearing firms and affiliates, and all of their respective officers, directors, employees, agents and stockholders. This indemnification shall not include any liability resulting from the failure by Associate, or Associate's designee(s), to supervise the business activities of Sub-Associates.

(c) The parties reserve any rights they may have to seek indemnification or contribution under this section pending final resolution of the action, suit, proceeding, demand, claim or assessment to which this section may apply. Resolution of each party's responsibility under this section shall, if not mutually agreed upon, be determined by arbitration before the NASD.

(d) Associate indemnifies RJFS for any loss occurring due to actions or failures to act by Associate's Clients.

(e) All liabilities set forth above shall include settlements, judgments, awards, interest, costs, reasonable attorney's fees (both internal arid external) whether incurred at arbitration, bankruptcy, or at the administrative, trial, appellate or post judgment level.

(f) If Associate is entitled to receive proceeds from any insurance coverage with regard to any liability for which Associate is required to indemnify

RJFS, Associate hereby assigns RJFS any and all such proceeds to the extent Associate would otherwise be obligated hereunder.

(g) All the indemnification provisions of this section shall continue for a period of six (6) years following termination of this Agreement.

21. **Obligations of RJFS.** RJFS will maintain an effective and adequately capitalized broker/dealer properly registered with all Regulatory Authorities. RJFS will furnish facilities for execution of securities transactions, confirmation of said transactions, a system for receipt and disbursement of funds and securities. Further, RJFS will maintain fidelity coverage for all Associates and Sub-Associates. This coverage may protect against exposure to monetary loss above the then current deductible (currently five hundred thousand dollars [$500,000]) by virtue of dishonest acts of a fidelity nature by Sub-Associates. Coverage is limited to those Sub-Associates that RJFS has been notified are affiliated with Associate, provided RJFS has received appropriate background information and completed fingerprint card.

22. **Breach.**

(a) In the event of a breach, or threatened breach, of any provision of this Agreement by Associate, either party shall be entitled to an injunction restraining such breach without showing or proving the actual damage sustained or about to be sustained. This remedy, and all other remedies provided in this Agreement, shall be cumulative and the exercise or

non-exercise of this remedy shall not preclude any other remedy at law or in equity.

(b) In the event of a breach of this Agreement, the prevailing party in any resulting litigation or arbitration shall recover its costs incurred in enforcing its rights with respect to such breach Such costs shall include, without limitation, reasonable attorney's fees (internal and external) and litigation expenses.

23. **Construction; Forum Selection Clause; Severability.** It is the intent of the parties hereto that the terms of this Agreement shall be construed pursuant to the laws of the State of Florida and in accordance with the requirements of the Regulatory Authorities to the extent applicable. The parties agree that all legal proceedings under this Agreement will be held in Pinellas County, Florida To the extent that any provision of this Agreement shall be deemed invalid or unenforceable, then this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

24. **Survival.** Paragraphs 6, 10, 11, 12, 16, 20, and 23 of this Agreement shall survive termination of this Agreement.

25. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

26. **Modification.** No change or modification of this Agreement shall be valid unless the same be in writing and signed by all of the parties hereto.

27. Entire Agreement This instrument and its attached initialed exhibits are the entire Agreement of the parties, except to the extent of any document incorporated herein by reference or any statutes, rules and regulations referred to herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

/s/
ASSOCIATE

RAYMOND JAMES FINANCIAL SERVICES, INC.

By:_____

EXHIBIT 20

DAMAGES 2004

1st 4 months W/ RJFS of 2004 $48,458 divided by 4 mo = $12115 avg per mo $12115 X 12 mo = $145,380

Last 5 Months w/LPL of 2004 = $54,988 - $15,000 note = $39,988

- Overrides for Manager Bishop should have been $29,809

In 2004 should have made + $145,380 + $29,808 =$175,188

Did make = $88,445
Loss income difference = $86,743
Loss of clients not transfer + $48,120
= $134,863 X 3 years
=$404,589

Other additional losses =$141,794 (see enclosed)

Total losses $404,589 + $141,794 = $546,383

Tom Bishop

Losses incurred due to termination:

Advertising:	
Community Phone Book Ad	$1,000
Sign	$3,500
Stationary	$1,000
Print Ad	$800
Raymond James Logo Merchandise	$700
Raymond James Promo Items	$1400
Verizon Phone Book Advertising	$600
Total	*$9,000*

Higher overhead due to not having Mike Finnie at the branch:

-Finnie paid on average $1,400 a month or 1/4 of the bills, by not having Mike Finnie due to Raymond James interference we incurred losses of **$50,400** over the next 24 months.

Transfer Fee reimbursement to client accounts (175 accounts @ $75 per account transfer)

Total cost **$13,125**

Postage for correspondence to clients **$200**

Registration fees: **$1,500**

Legal Fees charged **$51,157**

Walk-In Business due to Raymond James Name 2001-2004 averaged $50,000 income for a total of **$150,000**

2004-2005 have not open any accounts for 0 income
Loss of Revenue for three years is **$150,000**

Loss of Key recruit due to unexpected termination (Elvin Edmonds was ready to join our office and had been approved by Raymond James to be a broker at our office.) He had production of $200,000 a year, which would have generated $50,000 a year in revenue. Based on working for 3 years and receiving a 25% override, which was agreed upon the total loss was **$150,000**.

Total Non-Production Losses: 425,382 divided by 3 =**$141,794**

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Production History: Yearly Report

Thursday, April 29, 2004 5:06:01 PM

4810 - Thomas Bishop

Month	Average	Total	2004	2003	2002	2001	2000	1999
Jan	8,598.67	25,796.02	12,866.61	4,772.18	8,158.23	0.00	0.00	0.00
Feb	8,439.09	25,317.26	12,882.85	7,682.04	4,752.37	0.00	0.00	0.00
Mar	10,363.06	31,089.17	11,044.33	12,389.85	7,654.99	0.00	0.00	0.00
Apr	10,662.06	31,986.18	11,865.00	5,436.60	14,684.58	0.00	0.00	0.00
May	11,304.98	33,914.94	0.00	15,436.52	1,892.05	16,586.37	0.00	0.00
Jun	9,206.19	27,618.58	0.00	10,712.70	7,671.35	9,234.53	0.00	0.00
Jul	7,906.69	23,720.07	0.00	13,619.34	3,340.00	6,560.73	0.00	0.00
Aug	13,202.06	39,606.17	0.00	9,999.41	13,219.45	16,387.31	0.00	0.00
Sep	3,905.62	11,716.86	0.00	10,221.71	2,433.32	-938.17	0.00	0.00
Oct	6,362.06	19,146.17	0.00	8,079.33	6,435.19	4,631.65	0.00	0.00
Nov	9,029.67	27,089.00	0.00	12,943.54	6,889.12	7,256.34	0.00	0.00
Dec	8,700.94	26,102.82	0.00	10,448.45	5,316.92	10,337.45	0.00	0.00
	8,976.09	323,103.24	48,457.79	121,941.67	82,847.67	70,056.21	0.00	0.00

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Production Summary Report

67H - Richmond, VA-67H

Thursday, April 29, 2004 4:01:38 PM

Data as of May 2004

FA	Name	04/28/2004	05/04 MTD	2004 C-YTD	12mos @ 04/04	2003 Cal.	2004 F-YTD	2003 Fiscal
4810	Thomas Bishop	0.00	0.00	48,457.79	140,118.79	121,941.67	79,929.11	109,111.58
4826	Steven Hamant	747.74	847.74	40,405.21	157,021.97	177,341.81	88,318.37	210,954.18
5839	Michael Finnie	0.00	0.00	23,262.35	114,988.43	158,106.30	73,889.89	150,730.51
4833	Timothy Scanlon	2,900.00	2,900.00	21,513.66	88,838.81	94,986.76	40,037.39	90,365.90
6295	John Heyser	0.00	0.00	512.72	26,221.74	25,709.02	12,134.40	14,087.34
4824	* Name Unavailable *	0.00	0.00	0.00	0.00	14,372.62	0.00	32,730.90
4831	* Name Unavailable *	0.00	0.00	0.00	0.00	0.00	0.00	0.26
	Termed Rep Totals	0.00	0.00	103.95	785.54	3,725.62	279.71	7,477.34
		3,647.74	3,747.74	134,275.68	527,975.28	596,165.70	294,588.87	615,458.01

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RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Payroll Summary

FA: 67H / 4810 Thomas Bishop

Wednesday, June 02, 2004

Period of May 2004

	1st Period (05/07/2004)	2nd Period (05/21/2004)	Month To Date	(As Of May 2004) Fiscal YTD	Calendar YTD
Gross	1,170.14	35.86	1,206.00	81,135.11	49,663.79
B/D	259.62	49.69	309.31	16,754.62	10,482.25
Branch	910.52	-13.83	896.69	64,380.49	39,181.54
Other	.00	.00	.00	.00	.00
Expenses	-142.42	-481.22	-623.64	-26,707.41	-11,762.68
1099 Adj	.00	.00	.00	-10,200.00	.00
Held Bal.	.00	.00	.00		
TOTAL	768.10	-495.05	273.05	27,473.08	27,418.86
				Trailing 12	140,118.79

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RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Wednesday, June 16, 2004

Commission Ranking Report

Data as of 06/15/04 close of business

67H/4810 THOMAS W. BISHOP

Account	Name	State	Previous Close Market Value	Current Cal YTD Commission	Previous Cal Year Commission
45276577	TOHME TONI	VA	16,175.00	420.00	1,143.85
45276807	MILLS BRENNAN	VA	6,067.28	.00	20.00
45276869	COCHRAN JAMES	MD	65,566.91	.00	3,987.50
45276893	HUSTED JOAN	DC	73,208.76	.00	.00
45276925	TAME GEORGE	VA	8,877.00	.00	397.06
45287655	SCHEPS LONNIE	VA	273,164.43	498.09	1,586.43
45293741	EVANS GEORGE	VA	128.20	.00	.00
45308728	HUSTED BRIDGET	DC	4,319.68	.00	.00
45388131	CHIN AN *ACAT*	VA	.00	.00	100.00
45392500	FENNELL PATRICI	VA	.00	.00	4,635.49
45442722	TATE RYAN*ACAT*	VA	.00	.00	12.65
45445754	FORD WILLIAM	VA	.00	.00	49.49
45482567	BLEECHER DALE	VA	31,401.80	.00	.00
46095622	GRAY C	VA	38,442.60	.00	.00
46134968	NOBLET AN*ACAT*	VA	.00	.00	1,306.19
46194655	TRENT HERBERT A	VA	1,550.00	60.00	.00
46247668	PEDIGO MARY	VA	5,293.92	363.87	.00
46307308	STAPLES LAURA	VA	.00	.00	13.00
46414110	O'BRIEN MICHAEL	VA	.00	.00	26.00
46458019	PANELLA JOSEPH	VA	15,310.93	.00	.00
46582518	WOODCOCK CLAYTO	VA	155.00	.00	.00
49139656	BISHOP THOMAS	DC	18,612.43	1,129.07	50.00
49142003	JACOBS DARREN	VA	1,399.52	50.00	.00
57280623	ANDREWS IRA-4-	VA	.00	.00	2,918.70
57400220	KRUPP IRA	VA	48,281.50	2,154.31	10,181.17
57464071	WYATT IRA	VA	10,235.00	.00	353.72
57464165	WYATT IRA	VA	10,235.00	.00	353.72
57574300	EASLEY IRA-4-	VA	.00	.00	1,015.16
70613020	LEE IRA-4-	VA	.00	.00	380.32
70626782	POARCH IRA	VA	25,092.15	.00	.00
70675541	ANDERSON IRA-4-	VA	.00	.00	1,686.59
70675555	ANDERSON IRA-4	VA	.00	.00	817.03
70798900	ANDREWS SEP	VA	15,804.31	200.00	4,589.26
70807612	TUCKER IRA	VA	.00	.00	3,725.75
71515844	GOFF SEP	NC	6,478.51	.00	.00
71604840	SPURLOCK IRA	VA	35,496.74	.00	.00
72199788	BARNES IRA	VA	1,136.43	.00	.00
72310417	SWAIN IRA	VA	37,566.08	.00	2,934.55
74062217	INGRAM IR*ACAT*	VA	.00	.00	4.70
74701536	KRUPP IRA	VA	4,458.47	.00	190.32
75311480	COX IRA	VA	1,968.75	.00	.00
75537771	HUSTED IRA	DC	53,647.37	.00	.00
75537790	BISHOP IRA	DC	11,063.48	343.80	.00

Account	Name	State	Previous Close Market Value	Current Cal YTD Commission	Previous Cal Year Commission
75556401	WARWICK IRA	GA	40,121.18		
75561426	EVANS IRA	VA	2,512.50	.00	372.67
75574532	HUSTED RIRA	DC	2,613.72	.00	.00
75605802	NILSSEN I*ACAT*	VA	.00	.00	.00
75605982	NILSSEN I*ACAT*	VA	.00	.00	8.92
75647232	WALDEN IR*ACAT*	VA	.00	.00	3.70
75656090	STAPLES IRA	VA	6,360.00	.00	835.82
75658895	STAPLES IRA	VA	3,333.00	3,013.88	8,597.00
75887365	KELLY IRA*ACAT*	VA	.00	1,691.90	5,962.47
75808201	TRENT IRA	VA	37,119.53	.00	300.32
75863179	DAVIES SIRA	VA	3,958.68	200.00	.00
77533813	STAPLES SIRA	VA	2,231.00	.00	.00
77578811	HARRIS IRA	VA	10,385.08	.00	150.34
77589579	COCHRAN IRA	DC	15,146.69	.00	.00
77825492	NEWMAN IRA-4-	VA	.00	.00	.00
77916449	NEWMAN SEP-4-	VA	.00	1,059.16	1,217.16
77927947	MCSWEENEY IRA	NJ	3,067.80	2,226.42	1,729.92
77968080	GAYTHWAITE IRA	VA	42,936.45	.00	.00
80098088	SMITH,F-A&MA	VA	221,233.91	.00	2,036.99
80250055	KRUPP,CL	VA	144,498.07	.00	.00
80250660	KRUPP,B&AG	VA	16,100.88	2,231.45	11,762.92
80283203	BUCHOLTZ,N	VA	26,962.19	.00	389.91
80461484	DANIELS,E	VA	.00	.00	.00
80623066	SWAIN,M	VA	75,457.33	100.00	3,479.90
80646199	SWAIN,JL	VA	5,592.64	.00	137.31-
80852454	LOFLIN,WA&JB	VA	77,034.55	.00	.00
80912778	DANIELS,E	VA	36,177.28	.00	.00
80983471	KIES,R	VA	27,030.59	.00	.00
81154097	MATTHEWS,KN	UT	6,422.86	.00	.00
81179333	TUCKER,EP	VA	63,499.93	.00	.00
81367433	DICE JEAN	VA	67,989.73	.00	.00
81416773	RODGERS,SA	VA	491.92	.00	.00
81473891	SHEFFIELD,RC&ER	VA	13,531.64	.00	.00
81518998	BROWN,RJ	VA	1,168.36	.00	.00
81537044	EASLEY HENRY	VA	.00	.00	.00
81659790	MATTHEWS,LL	VA	23,481.19	.00	1,471.60
81666465	PHILLIPS,AM	VA	40,965.80	.00	.00
81772729	SHEFFIELD,CK	VA	32,451.29	.00	.00
82008712	KRUPP CAROL	VA	135,594.84	.00	.00
82213312	ANDREWS,RN&BR	VA	312,113.11	7,520.44	2,959.19-
82213326	ANDERSON,DM&LS	VA	231,211.15	6,882.94	6,490.08
82266937	POARCH,AG	VA	3,748.74	.00	.00
82608993	KRUPP MARION	VA	14,241.24	.00	.00
82624139	BUCHOLTZ,RL	VA	64,808.34	.00	.00
83179996	MCSWEENEY LINDA	NJ	46,737.08	.00	399.52
83187251	NICHOLAS PAUL	VA	13,950.50	3,332.24	.00
83971034	BOLTON PATRICK	VA	63.54	.00	9,547.34
84201755	NEWMAN WALLACE	VA	92,243.69	682.20	.00
84336815	GWINN,CS	VA	17,156.29	.00	4,807.56
84351716	LEE,MM	VA	129,171.90	.00	.00
84607656	WEST BRIAN	VA	1,746.06	.00	2,972.90
84637210	JOHNSON THOMAS	VA	2,240.55	137.23	.00
84643678	TUCKER GARY	GA	.00	.00	.00
84938053	SPREARBECK NED	MD	22,743.00	757.12	9,169.86
84948561	TOHME HENRI	VA	.00	.00	645.46
85012862	AI VAREZ,M	VA	.00	.00	223.06
85504732	BLACKWELL WILLI	VA	.00	251.77	340.97
85601591	LIFT TRUCK EXCH	VA	.00	200.00	424.48
85602737	TUCKER GARY	GA	51,503.84	6,042.55	617.23
85672853	SHEFFIELD,KB	VA	2,770.17	.00	6,778.21
					.00

Account	Name	State	Previous Close Market Value	Current Cal YTD Commission	Previous Cal Year Commission
85699353	EASLEY HENRY	VA	89,875.78	1,885.78	1,534.99
85842389	SPEARBECK JANE	MD	16,553.95	328.76	913.41
85893958	MAJORS SEVICES	VA	00	00	394.01
85962112	BALDERSON LESLE	VA	00	00.00	00
87339898	BROSSFIELD "ACAT"	VA	00	00	12.60
87461735	CARPIN IR"ACAT"	VA	00	00	603.62
87493454	FLETCHER "ACAT"	VA	00	00	795.59
87499559	BERRY IRA"ACAT"	VA	00	00	348.84
88110162	DICE IRA	VA	8,186.38	00	00
	GRAND TOTAL		3,107,805.80	43,824.98	124,731.52

THOMAS W. BISHOP'S 1099 REPORTABLE INCOME FOR 2004

RE: HIS EARNINGS AT LINSCO/PRIVATE LEDGER ("LPL")

$39,988

**** AFTER DEDUCTING $15,000 FOR NOTE**

Year-To-Date / Previous Year Override Summary

Report No: CM3001

Report for Rep ID: 1ATB

Run Date: August 6, 2005

There is no data for Rep: 1ATB

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Pending Overrides

Report No: CM3003

Report for Rep ID: [redacted]TB

Run Date: August 8, 2005

There is no data for Rep: 1ATB

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EXHIBIT 21

Steve Hamant

Losses incurred due to termination:

Advertising:	
Community Phone Book Ad	$1,000
Sign	$3,500
Stationary	$1,000
Print Ad	$800
Raymond James Logo Merchandise	$700
Raymond James Promo Items	$1400
Verizon Phone Book Advertising	$600
Total	**$9,000**

Higher overhead due to not having Mike Finnie at the branch:

-Finnie paid on average $1,400 a month or 1/4 of the bills, by not having Mike Finnie due to Raymond James interference we incurred losses of *$50,400* over the next 24 months.

Transfer Fee reimbursement to client accounts (175 accounts @ $75 per account transfer)

Total cost	**$13,125**
Postage for correspondence to clients	**$200**
Registration fees:	**$1,500**
Legal Fees charged	**$51,157**

Walk-In Business due to Raymond James Name
2001-2004 averaged $50,000 income for a total of $150,000
2004-2005 have not open any accounts for 0 income
Loss of Revenue for three years is **$150,000**

Loss of Key recruit due to unexpected termination (Elvin Edmonds was ready to join our office and had been approved by Raymond James to be a broker at our office.) He had production of $200,000 a year, which would have generated $50,000 a year in revenue. Based on working for 3 years and receiving a 25% override, which was agreed upon the total loss was **$150,000**.

Total Non-Production Losses: 425,382 divided by 3 **=$141,794**

Production Losses:
Steve Hamant
Average previous two year production prior to termination $190,000.
Average production post two years after termination $70,000.
Average Drop in production $120,000 x 3 years = **$360,000**

Total Losses $501,794

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Payroll Summary

Monday, May 24, 2004

FA: 67H / 4826 Steven Hamant

Period of January 2003

	1st Period (01/03/2003)	2nd Period (01/24/2003)	Month To Date	(As Of January 2003) Fiscal YTD	Calendar YTD
Gross	1,259.18	5,260.67	6,519.85	88,045.38	6,519.85
B/D	442.55	1,158.28	1,600.83	14,538.60	1,600.83
Branch	816.63	4,102.39	4,919.02	73,506.78	4,919.02
Other	.00	.00	.00	.00	.00
Expenses	-30.00	-793.50	-823.50	-2,354.70	-823.50
Held Bal.	.00	.00	.00		
TOTAL	786.63	3,308.89	4,095.52	71,152.08	4,095.52
				Trailing 12	192,489.26

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RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Payroll Summary

Thursday, May 27, 2004

FA: 67H / 4826 Steven Hamant

Period of February 2004

	1st Period (02/06/2004)	2nd Period (02/20/2004)	Month To Date	(As Of February 2004) Fiscal YTD	Calendar YTD
Gross	4,748.81	3,317.19	8,066.00	74,048.50	26,135.34
B/D	803.59	627.97	1,431.56	11,312.63	3,836.48
Branch	3,945.22	2,689.22	6,634.44	62,735.87	22,298.86
Other	.00	.00	.00	.00	.00
Expenses	352.90	-477.00	-124.10	2,620.40	-714.85
Held Bal.	.00	.00	.00		
TOTAL	4,298.12	2,212.22	6,510.34	65,356.27	21,584.01
				Trailing 12	188,891.30

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FINANCIAL SERVICES

REPRESENTATIVE:
STEVEN E HAMANT
10010 THREE CHOPT RD
RICHMOND, VA 23233

Commission and Fee Statement
For the Period Ended 14-Dec-04

OFFICE: C593 C593
REP ID: HAVB
STATUS: 2

Rep	Ref #/ Acct Descr	Date/ Emp Ind B/S	Prod ID/ Units	Description/ Invested Amt	Client Name/ Client ID	Sy% %	Gross Comm/Fee	Payout/ Payout %	Adj Pay/ Adj %	Ticket Charges	Floor Broker	Net Comm/Fee
					YEAR-TO-DATE SUMMARY							
	REP COMMISSIONS AND FEES						61,715.88	55,113.90	55,113.90	454.00	6.75	54,653.15
	OVERRIDES						80.00	72.00	72.00	30.00	0.00	42.00
	SUBTOTAL - REP COMMISSION, FEES AND OVERRIDES						61,795.88	55,185.90	55,185.90	484.00	6.75	54,695.15
	BONUS											8.00
	GENERAL ADJUSTMENTS											-2,852.57
	STANDARD ADJUSTMENTS											2,413.90
	1099 REPORTABLE INCOME						55,185.90					
	COMMISSIONS FOR PRODUCTION BONUS CALCULATION						61,715.88					
	COMMISSIONS FOR GENERAL SECURITIES BONUS CALCULATION						3,013.67					

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Linsco/Private Ledger Member NASD/SIPC
A Registered [illegible] Adviser

FINANCIAL SERVICES

REPRESENTATIVE:
STEVEN E HAMANT
10010 THREE CHOPT RD
RICHMOND, VA 23233

Commission and Fee Statement
For the Period Ended 14-Dec-05

OFFICE. C593 C593
REP ID 1AVB
STATUS. 2

Rep	Ref #/ Acct Descr	Date/ Emp Ind B/S	Prod ID/ Units	Description/ Invested Acct	Client Name/ Client ID	Split %	Gross Comm/Fee	Payout/ Payout %	Adj Pay/ Adj %	Ticket Charges	Floor Broker	Net Comm/Fee
				YEAR-TO-DATE SUMMARY								
				REP COMMISSIONS AND FEES			112,239.84	100,447.59	100,447.59	1,533.00	48.66	98,865.93
				OVERRIDES			5,349.49	4,814.53	1,778.18	0.00	0.00	1,778.18
				SUBTOTAL - REP COMMISSION, FEES AND OVERRIDES			117,589.33	105,262.12	102,225.77	1,533.00	48.66	100,644.11
				BONUS								751.81
				GENERAL ADJUSTMENTS								1,097.66
				STANDARD ADJUSTMENTS								6,502.48
				1099 REPORTABLE INCOME								
				COMMISSIONS FOR PRODUCTION BONUS CALCULATION			102,403.84					
				COMMISSIONS FOR GENERAL SECURITIES BONUS CALCULATION			105,346.52					
							6,293.02					

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Linsco/Private Ledger Member NASD/SIPC
A Registered Investment Adviser

REPRESENTATIVE:
STEVEN E HAMANT
10010 THREE CHOPT RD
RICHMOND, VA 23233

Commission and Fee Statement
For the Period Ended 30-Mar-06

OFFICE: C593 C593
REP ID: IAVB
STATUS. 2

Rep	Ref #/ Acct Descr	Date/ Emp Ind S/S	Prod ID/ Units	Description/ Invested Amt	Client Name/ Client ID	Split %	Gross Comm/Fee	Payout/ Payout %	Adj Pay/ Adj %	Ticket Charges	Floor Broker	Net Comm/Fee
					YEAR-TO-DATE SUMMARY							
	REP COMMISSIONS AND FEES						20,049.90	17,638.05	17,638.05	219.00	3.54	17,306.51
	OVERRIDES						3,380.50	2,042.47	760.62	17.25	0.00	743.37
	SUBTOTAL - REP COMMISSION, FEES AND OVERRIDES						23,430.40	20,680.52	18,398.67	346.25	3.54	18,049.88
	BONUS											803.31
	GENERAL ADJUSTMENTS											344.41
	STANDARD ADJUSTMENTS											1,859.86
	1099 REPORTABLE INCOME						19,201.98					
	COMMISSIONS FOR PRODUCTION BONUS CALCULATION						12,016.81					
	COMMISSIONS FOR GENERAL SECURITIES BONUS CALCULATION						2,133.31					

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Linsco/Private Ledger Member NASD/SIPC
A Registered Investment Advisor

EXHIBIT 22

Tim Scanlon

Losses incurred due to termination:

Advertising:

Community Phone Book Ad	$1,000
Sign	$3,500
Stationary	$1,000
Print Ad	$800
Raymond James Logo Merchandise	$700
Raymond James Promo Items	$1400
Verizon Phone Book Advertising	$600
Total	**$9,000**

Higher overhead due to not having Mike Finnie at the branch:

-Finnie paid on average $1,400 a month or 1/4 of the bills, by not having Mike Finnie due to Raymond James interference we incurred losses of $50,400 over me next 24 months.

Transfer Fee reimbursement to client accounts (175 accounts @ $75 per account transfer)

Total cost **$13,125**

Postage for correspondence to clients **$200**

Registration fees: **$1,500**

Legal Fees charged **$51,157**

Walk-In Business due to Raymond James Name

2001-2004 averaged $50,000 income for a total of $150,000

2004-2005 have not open any accounts for 0 income

Loss of Revenue for three years is **$150,000**

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Total Non-Production Losses: 425,382 divided by 3 **=$141,794**

Production Losses:

2002 Raymond James production $57,000
Production increase 60% in 2003 to $95,000
If no termination production was on pace to be $150,000 for 2004
Due to termination and loss of key accounts production was only $40,000 for 2004 a loss of $110,000 for 2004.
In 2005 production increased to $86,000 an 115% increase but off $64,000 from the $150,000 it would have been if not for the loss of the key accounts.
In 2006 the projected production in $100,000, still $50,000 shy of the $150,000 it would have been if not for the loss of the key accounts
Total loss of production over three years **$224,000**

Total Loss $365,795

REPRESENTATIVE:
TIMOTHY E SCANLON
10010 THREE CHOPT RD
RICHMOND, VA 23233

Commission and Fee Statement
For the Period Ended 14-Dec-05

OFFICE: C593 C593
REP ID: 1BYB
STATUS: 2

Rep	Ref #/ Acct Descr	Date/ Exap Ind	S/S	Prod ID/ Units	Description/ Invested Amt	Client Name/ Client ID	Split %	Gross Comm/Fee	Payout/ Payout %	Adj Pay/ Adj %	Ticket Charges	Floor Broker	Net Comm/Fee
						YEAR-TO-DATE SUMMARY							
	REP COMMISSIONS AND FEES							84,508.55	75,863.09	75,863.09	600.00	22.00	75,241.09
	OVERRIDES							0.00	0.00	0.00	0.00	0.00	0.00
	SUBTOTAL REP COMMISSION, FEES AND OVERRIDES							84,508.55	75,863.09	75,863.09	600.00	22.00	75,241.09
	BONUS												0.00
	GENERAL ADJUSTMENTS												375.89
	STANDARD ADJUSTMENTS												5,974.43
	1099 REPORTABLE INCOME							75,863.09					
	COMMISSIONS FOR PRODUCTION BONUS CALCULATION							84,508.55					
	COMMISSIONS FOR GENERAL SECURITIES BONUS CALCULATION							2,585.85					

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Linsco/Private Ledger Member NASD/SIPC
A Registered Investment Adviser

REPRESENTATIVE:
TIMOTHY E SCANLON
10010 THREE CHOPT RD
RICHMOND, VA 23233

Commission and Fee Statement
For the Period Ended 14-Dec-04

OFFICE: C593 C593
REP ID: 19V8
STATUS 2

Rep	Ref #/ Acct Descr	Date/ Resp Ind	B/S	Prod ID/ Units	Description/ Invested Amt	Client Name/ Client ID	Split %	Gross Comm/Fee	Payout/ Payout %	Adj Pay/ Adj %	Ticket Charges	Fees Broker	Net Comm/Fee
						YEAR-TO-DATE SUMMARY							
	REP COMMISSIONS AND FEES							20,564.20	18,363.53	18,363.53	173.00	0.00	18,190.53
	OVERRIDES							0.00	0.00	0.00	0.00	0.00	0.00
	SUBTOTAL - REP COMMISSION, FEES AND OVERRIDES							20,564.20	18,363.53	18,363.53	173.00	0.00	18,190.53
	BONUS												0.00
	GENERAL ADJUSTMENTS												-356.14
	STANDARD ADJUSTMENTS												1,672.11
	1099 REPORTABLE INCOME							18,363.53					
	COMMISSIONS FOR PRODUCTION BONUS CALCULATION							20,564.20					
	COMMISSIONS FOR GENERAL SECURITIES BONUS CALCULATION							938.64					

Linsco/Private Ledger Member NASD/SIPC
A Registered Investment Adviser

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RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

Payroll Summary

Wednesday, June 02, 2004

FA: 67H / 4833 Timothy Scanlon

Period of January 2004

	1st Period (01/02/2004)	2nd Period (01/23/2004)	Month To Date	(As Of January 2004) Fiscal YTD	Calendar YTD
Gross	496.24	4,311.94	4,808.18	23,331.91	4,808.18
B/D	121.30	545.63	666.93	3,236.10	666.93
Branch	374.94	3,766.31	4,141.25	20,095.81	4,141.25
Other	.00	.00	.00	.00	.00
Expenses	-75.00	-995.00	-1,070.00	-2,401.95	-1,070.00
Held Bal.	.00	.00	.00		
TOTAL	299.94	2,771.31	3,071.25	17,693.86	3,071.25
				Trailing 12	94,966.76

EXHIBIT 25

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Case Number: 05-04391

Names of the Claimants
Thomas W. Bishop
Steven E. Hamant
Timothy E. Scanlon

Name of the Respondent
Raymond James Financial Services, Inc.

Hearing Site: Richmond, Virginia

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Claimant Thomas W. Bishop: Jay J. Levit, Esq., Levit & Mann, P.C., Richmond, VA,

For Claimants Steven E. Hamant and Timothy E, Scanlon: Scott Gregory Crowley, Esq., Crowley & Crowley, Richmond, VA.

For Raymond James Financial Services, Inc. ("RJF"), hereinafter referred to as "Respondent": Stephen G. Cochran, Esq., Womble Carlyle Sandridge & Rice, PLLC, Tysons Corner, VA.

CASE INFORMATION

Statement of Claim filed on or about August 23, 2005.
Claimants Bishop, Hamant, and Scanlon, hereinafter collectively referred to as "Claimants", signed the Uniform Submission Agreement; July 13, 2005.
Answer, Affirmative Defenses, and Counterclaims filed by Respondent on or about: October 28, 2005.
Respondent signed the Uniform Submission Agreement: October 28, 2005.
Claimants' Answer to Respondents Counterclaims filed on or about: November 28, 2005.
Respondent's Motion to Dismiss ("Motion to Dismiss") filed on or about: December 12, 2005.
Claimant Bishop's Response in Opposition to Respondent's Motion to Dismiss filed on or about: February 24, 2006.
Memorandum of Claimants Hamant and Scanlon in Opposition to Respondent's Motion to Dismiss filed on or about; February 24, 2006.
Respondent's Reply Memorandum in Support of its Motion to Dismiss filed on or about; March 27, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary and legal duties; violation of just and equitable legal principles of trade; breach of promises and inducements; interference with, and unlawful termination of, Claimants' prospective economic advantages; interference with the

performance of contractual promises and inducements; tortious and deceitful termination of

Claimants' legitimate and high business expectations; violation of statutory Virginia public policy set forth in Virginia Code § 13.1-558; and, common law and statutory conspiracy. The causes of action relate to the termination of Claimants' employment with Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent asserted the cause of action of breach of contract against all Claimants and the cause of action of violation of the Virginia Computer Crimes Act against Claimant Bishop. The causes of action relate to the termination of Claimants' employment with Respondent.

Unless specifically admitted in their Answer to the Counterclaim, Claimants denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant Bishop requested compensatory damages of $1,500,000.00 and punitive damages of $250,000.00. Claimants Hamant and Scanlon each requested compensatory damages of $750,000.00 and punitive damages of $50,000.00. All three Claimants

requested attorneys' fees, costs, expenses, fees, assessments, and such additional legal and equitable relief as the undersigned arbitrators (the "Panel") deemed appropriate. Claimants also requested dismissal of the Counterclaim, with prejudice, attorneys' fees and other expenses incurred, and such other relief as may be just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety and that Respondent be awarded its costs. In its Counterclaim, Respondent requested compensatory damages of $98,361.82, interest, attorneys' fees and other expenses, and such other relief as the Panel deemed appropriate, just, and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 11, 2006, the Panel issued an Order which denied Respondent's Motion to Dismiss.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant Bishop compensatory damages in the sum of $156,050.00, pre-judgment interest specifically

excluded.

Respondent is liable and shall pay to Claimant Hamant compensatory damages in the sum of $74,050.00, pre-judgment interest specifically excluded.

Respondent is liable and shall pay to Claimant Scanlon compensatory damages in the sum of $72,050.00, pre-judgment interest specifically excluded.

Respondent is liable and shall pay to Claimants the sum of $600.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Respondent's Counterclaim is dismissed, with prejudice.

Although Respondent did have some apparent reasons to be concerned about circumstances and the relationships between registered representatives in its Richmond, Virginia branch office #67H, among other factors leading to this decision, the Panel is of the opinion that Respondent engaged in the unauthorized practice of law by employing staff counsel to advise and represent these Claimants in their individual capacities. Having assumed the role and responsibilities of legal counsel in relation to its registered representatives, Respondent is held to the highest ethical obligations and fiduciary duties that would apply to a lawyer and law firm duly licensed to practice law in the Commonwealth of Virginia and engaged in business dealings with its legal client.

This includes a duty to maintain the confidences and secrets of, and to maintain utmost loyalty to protect the interests of, each of these Claimants. In addition, Respondent failed to act in accordance with the standards of business fairness and good faith required by NASD rules in not providing these Claimants with notice and warning that they were under a higher level of supervision to the extent stated in Respondent's own policies and procedures that its registered representatives should be entitled to rely upon, and in not providing the same notice and warning and in not sharing the communications between Respondent and these Claimants' legal counsel, who was also representing Respondent, regarding Respondent's higher lever of supervision of these Claimants and its intention to terminate its relationship with these Claimants. There was possibly also a failure to communicate through and from common legal counsel the nature of separate settlement negotiations in another NASD arbitration. The Panel also believed that in light of the above described high fiduciary duty and ethical obligations, that withdrawal of legal representation during a pending arbitration both prejudiced some or all Claimants' litigation interest and made their transfer to other Raymond James Financial Services, Inc. branch offices impossible as a practical matter.

Any and all claims relief not specifically addressed herein, including Claimants' requests for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= $ 600.00
Counterclaim filing fee	= $1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings orto the member firm(s) that employed the associated person(s) at the time of the event(s)giving rise to the dispute. Accordingly, Respondent is a party and member firm.

Member surcharge	= $2,800.00
Pre-hearing process fee	= $ 750.00
Hearing process fee	= $5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: September 6-8, 2006, adjournment by Respondent. = $1,200.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her

hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ $1,200.00/session = $2,400.00
Pre-hearing conferences: January 10, 2006 1 session

May 9, 2006 1 session

Eleven (11) Hearing sessions@$1,200.00/session =$13,200.00

Hearing Dates: June 22,2006	2 sessions
June 23, 2006	2 sessions
November 27, 2006	2 sessions
November 28, 2006	2 sessions
November 29, 2006	2 sessions
December 7, 2006	1 session

Total Forum Fees = $15,600.00

1. The Panel has assessed the total forum fees of $15,600.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= $ 600.00
Total Fees	= $ 600.00
Less payments	= $ 600.00

Balance Due NASD Dispute Resolution = $ 0.00

Respondent is solely liable for:

Counterclaim Filing Fee	= $ 1,000.00
Adjournment fee	= $ 1,200.00
Forum Fees	= $15,600.00
Member Fees	= $ 8,550.00
Total Fees	=$26,350.00
Less payments	= $10,300.00

Balance Due NASD Dispute Resolution =$16,050.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Stephen Polan Meyer, Esq. - Public Arbitrator, Presiding Chairperson
Robin S. Gnatowsky - Public Arbitrator
Ronald T. Dilks - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

_____ _____
Stephen Polan Meyer, Esq. Signature Date
Public Arbitrator, Presiding Chairperson

/s/

_____ _____
Robin S, Gnatowsky Signature Date
Public Arbitrator

/s/

_____ _____
Ronald T. Dilks Signature Date
Non-Public Arbitrator

December 12, 2006

Date of Service (For NASD Dispute Resolution use only)

Concurring Arbitrators' Signatures

/s/

_____ _____
Stephen Polan Meyer, Esq. Signature Date
Public Arbitrator, Presiding Chairperson

/s/

_____ _____
Robin S. Gnatowsky Signature Date
Public Arbitrator

/s/

_____ _____
Ronald T. Dilks Signature Date
Non-Public Arbitrator

Date of Service (For NASD Dispute Resolution use only)

Concurring Arbitrators' Signatures

/s/

_____ _____

Stephen Polan Meyer, Esq. Signature Date
Public Arbitrator, Presiding Chairperson

/s/

_____ _____

Robin S. Gnatowsky Signature Date
Public Arbitrator

/s/

_____ _____

Ronald T. Dilks Signature Date
Non-Public Arbitrator

Date of Service (For NASD Dispute Resolution use only)

EXHIBIT 26

MEYER, FORD & GLASSER
ATTORNEYS AT LAW

STEPHEHN P. MEYERT
LARRY O. FORD
MICHAEL L. GLASSER
Certified by National Board of Trial Advocacy as a Civil Trial Advocate
FINRA Arbitrator
TELEPHONE (304) 345-3900
FACSIMILE (304) 345-3935
E-MAIL- smeyer@citynet.net,
www.meyarandford.com

P.O. BOX 11090
CHARLESTON,
WEST VIRGINIA
25339

Office Location : 120 Capitol Street, Charleston,. WV 25301

April 11, 2008

William J. Cassidy
Senior Case Administrator
FINRA
Boca Center Tower 1
52O0 Town Center Circle, Suite 200
Boca Raton, FL 33486-1015

Re: FINRA Dispute Resolution Arbitration Number 05-04391 Thomas W. Bishop, Steven E. Hamant and Timothy E. Scanlon v. Raymond James Financial Services, Inc.

Dear Mr. Cassidy:

Pursuant to a telephone conference held on April 9,

2008, at 2:00 o'clock p.m. the arbitrators reviewed the award handed down on December 12, 2006, pursuant to the Order of Robert E- Payne, Senior Judge of the United States District for the Eastern District of Virginia, on December 18, 2007.Pursuant to the directions of that Order, the arbitrators have reviewed the matter and have determined that the award against Raymond James Financial Services, Inc. be affirmed and gives as its reasons the following:

It is the finding of the panel that the evidence was clear that the broker- dealer provided legal representation to the claimants through its lawyer employee in a matter involving a business relationship between the employer and claimants that was also adversarial with a clear conflict of interest.

The evidence showed that this Included the fact that claimants were billed (by the broker-dealer for its own account) through their registered representative compensation accounts, itemized hourly time for legal services, provided by the broker-dealer's employed lawyer.

There was also evidence presented, including e-mails, that showed that the respondent's attorney favored the interest of his employer broker-dealer to the disadvantage of the claimants, who were also his clients. It is the position of the panel that if a corporation employs a lawyer to provide legal services that corporation is then engaged in the practice of law. As such, it is held to the same standard as a law firm and owes to its client the

highest degree of fiduciary duty. If it chooses to engage in the business with such clients, it is obligated to place the interest of those clients ahead of its own.

The broker-dealer in this case failed in that obligation and the claimants suffered losses pertaining to the issues for which the respondent provided its lawyer.

The arbitrators did not have before them the damage information and so requests that the claimants submit supporting calculation of damages and that the respondent file its exceptions.

It is the belief that upon the completion of the review of the damage calculations, and such exceptions, that the panel will need to have a conference call to discuss the award of damages and issue a ruling regarding same.

Very truly yours,

/s/_____
Stephen P. Meyer
Public Arbitration presiding Chair person

SPM/dkh

CC: Robin S. Gnatowsky, Esq.
Ronald T. Dilks

EXHIBIT 27

June 4, 2008

William J. Cassidy, Senior Case Administrator
FINRA
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, FL 33486-1015

Re: FINRA Dispute Resolution Arbitration Number 05-04391 Thomas W. Bishop, Steven E. Hamant and Timothy E. Scanlon v. Raymond James Financial Services, Inc.

Dear Mr. Cassidy:

Pursuant to the order of Robert E. Payne, Senior Judge of the United States District Court for the Eastern District of Virginia, the arbitrators continued with deliberations regarding the damage segment of the review of December 12, 2006. As per the letter of April 11, 200S, the panel affirmed the liability of the respondent, Raymond James Financial Services, Inc. The unauthorized practice of law was one among other factors considered by the panel and that considering the case as a whole believes the liability decision to be just and appropriate.

The panel has noted that the claimants have provided material regarding the damages suffered by the respective claimants and that the respondent has filed no exceptions to said materials.

The respondent is liable and shall pay to claimant, Hamant compensatory damages in the sum of $74,050, prejudgment interest, specifically excluded.

The respondent is liable and shall pay to claimant, Scanion, compensatory damages in the sum of $72,050, prejudgment interest, specifically excluded.

The panel makes its decision based upon the material provided by the parties and it affirms the awards earlier determined as follows:

The respondent is liable and shall pay to claimant, Bishop compensatory damages in the sum of $1 56,050, prejudgment interest, specifically excluded.

The panel has now completed the review of the liability and damage issues as required by the aforesaid order and submits it's ruling to you for notification of
the parties.

Very truly yours,

/s/

_____

Stephen P. Meyer

SPM / dkh

Jay J. Levit, Esq., Thomas W. Bishop 10132 West Broad Street, Glen Allen, VA 23060-3302

Finra

Financial Industry Regulatory Authority

VIA FACSIMILE 804-747-5576

June 10,2008

Jay J. Levit, Esq.
10132 West Broad Street
Glen Allen, VA 23060-3302

Subject: FINRA Dispute Resolution Arbitration Number 05-04391 Thomas W. Bishop, Steven E. Hamant, and Timothy E. Scanion v. Raymond James Financial Services, Inc.

Dear Mr. Levit:
Enclosed please find an Order issued by the Panel dated June 4, 200&

Very truly yours,
/S/
William J. Cassidy
Senior Casa Administrator
561 -416-0277 Fax: 301-527-4968

WJC:ndm:LC53A
idr:02/Q7/2G08

CC: Ronald T. Dilks
Robin S. Gnatowsky
Stephen Poian Meyer

RECIPIENTS:
Stephen G. Cochran, Esq., Raymond James Financial Services, inc. Haight, Tramorrte, Yeonas, et al, 3221 Old Courthouse Road, Suite 300, Vienna, VA 22182

Scott Gregory Crowley, Esq., Steven E. Hamant Crowley & Crowley, 7201 Glen Forest Drive, Suite 106, Richmond, VA 23226

Scott Gregory Crowley, Esq., Timothy E. Scanlon Crowley & Crowley, 7201 Glen Forest Drive, Suite 106, Richmond, VA 23226

Investor Protection Market integrity.
Dispute Resolution
Boca Center Tower 1
t 5614160277
Southeast Regional Office
5200 Town Center Circle
f 3015274868
Suite 200
www.finra.org
Boca Raton, PL
33486-1015

Jay J.Levit, Esq., Thomas W. Bishop
10132 West Broad Street, Glen Allen, VA 23060-3302

EXHIBIT L

June 25, 2004

To whom it may concern:
Please accept this as my letter of resignation. As of June 25th 2004, I voluntarily resign from Raymond James Financial Services.

Sincerely,

/S/

_____

Steve Hamant

June 25, 2004

This is to inform Raymond James Financial that I am voluntarily resigning on June 25, 2004, My rep is 4833.

Sincerely,

/S/

_____

Tim Scanlon

06/25/04

To: Whom it may concern

From: Thomas W. Bishop

Re: Resignation
Due to circumstances beyond my control, I hereby regretfully announce my Voluntary Resignation from Raymond James Financial Services effective as of 12 Noon, 06/25/04.

Sincerely,

/S/

_____

Thomas W. Bishop
Branch Manager

HAIGHT, TRAMONTE, YEONAS, ROBERTS &
COCHRAN, P.C.
LAWYERS
8221 OLD COURTHOUSE ROAD, SUITE 300
VIENNA, VIRGINIA 22162
TELPHONE 703 734-4800
FACSIMILE 703 442-9532

August 14, 2008

VIA UPS OVERNIGHT DELIVERY

Honorable Robert E. Payne
United States District Court
Eastern District of Virginia
United State Courthouse
1100 E. Main Street, 5th Floor
Richmond, Virginia 23219-3517

RE: Raymond James Financial Services, Inc. v. Thomas W. Bishop, et al. CaseNo.3:07CV028

Dear Judge Payne:

Please find enclosed the entire transcript from the arbitration hearing together with my hearing transcript index and an email from the transcription service. I enclosed the email from the transcription service because I discovered gaps in the transcript. My entire opening statement and the vast majority of the direct examination of Mr. Scanlon were omitted, I called these problems to the attention of Mr. Levit and Mr. Crowley When I discovered them. I do not believe that they are of any Particular consequence. I will be citing to the transcript when I fine my Reply Memorandum On August 22, 2008.

Thanking you for your patience with this matter, I remain.

Sincerely yours,

/S/

Stephen G. Cochran

Enclosures

cc: Jay J. Levit, Esq.
Scott G. Crowley, Esq.
Terrance Bostic

ARBITRATION

RAYMOND JAMES FINANCIAL SERVICES, INC.,

Plaintiff,

v. Case No.: 05-04391

THOMAS W. BISHOP, STEVEN H. HAMANT, and TIMOTHY E. SCANLON,

Defendants.

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Stephen Cochran

From: G&L Transcription, Inc
[gary@gltranscription.com]
Sent: Wednesday, August 13, 2008 10:37 AM
To: Stephen Cochran
Subject: RE:

Hello Steven,

Will print and fed express. Also, many tapes had problems in this case, your openings may have been on 6/22/06 tape 2 Side A or Tape 4 Side B which was missing audio. Some were defective and others had no audio recorded. I have listed the problem areas.

Please note that some of the tapes had no voices. A description is below.

Date	Tape	Side A	Side B
6/22/06	1	Yes	Yes
6/22/06	2	No	Yes
6/22/06	3	Yes	Yes
6/22/06	4	Yes	No
6/23/06	1	Yes	Yes
6/23/06	2	No	No
6/23/06	3	No	No
6/23/06	4	No	No

Yes- transcribed
No= No voices on tape.

Thank you,

Gary Froonjian

G&L Transcription, Inc
www.gltranscription.com
<http://www.gltranscription.com>
garv@gltranscription.com
<mailto:gary@gltranscription.com
561.998.1981 office
800.866.0632 Report Fax
561.241.3619 Admin Fax

—Original Message

From: Stephen Cochran
[mailto:scochran@htslaw.com]
Sent: Wednesday, August 13, 2008 9:25 AM
To: G&L Transcription, Inc
Subject: RE:

Gary, please check on my missing opening and FedX the original and copies of the transcripts ASAP. They must be filed by Tuesday. Thanks

IN THE UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

RAYMOND JAMES FINANCIAL SERVICES, INC,

Plaintiff,

v. Case No.:3:07CV028

THOMAS W. BISHOP,
STEVEN E- HAMANT, and
TIMOTHY E. SCANLON,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that the defendants, above named, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order and Memorandum Opinion entered in this action on December 18, 2008 granting plaintiffs renewed motion to vacate the award of arbitration previously entered in favor of the defendants on December 12, 2006, and denying the defendants' motions to confirm the stated arbitration award.

Respectfully submitted.

THOMAS W. BISHOP, defendant
STEVEN E. HAMANT, defendant
TIMOTHY E. SCANLON, defendant
/s/

Jay J. Levit
Counsel for defendant Thomas W. Bishop

/s/

Scott G. Crowley
Counsel for defendants
Steven E. Hamant and Timothy E. Scanlon

Jay J. Levit, Esquire, VSB#5637
10132 W. Broad Street
Glen Allen, Virginia 23060
(804) 270-4600, Fax: (804) 747-5576
Counsel for defendant Thomas W. Bishop

Scott Gregory Crowley (VSB # 31216)
CROWLEY & CROWLEY
The Meridian Building
1800 Bayberry Court, Suite 102
Richmond, Virginia 23226
(804) 282-5303, Fax: (804) 282-5337
Counsel for defendants Steven E. Hamant
and Timothy E. Scanlon

CERTIFICATE

I certify that on this 19th day of December, 2008,1 sent by regular mail, postage prepaid, a copy of the foregoing Notice of Appeal to counsel for Raymond James Financial Services, Inc., Stephen G. Cochran, Esquire, Haight, Tramonte, Yeonas, Roberts & Cochran, P.C., 8221 Old Courthouse Road, Suite 300, Vienna, VA 22182

/s/

Jay J Levit